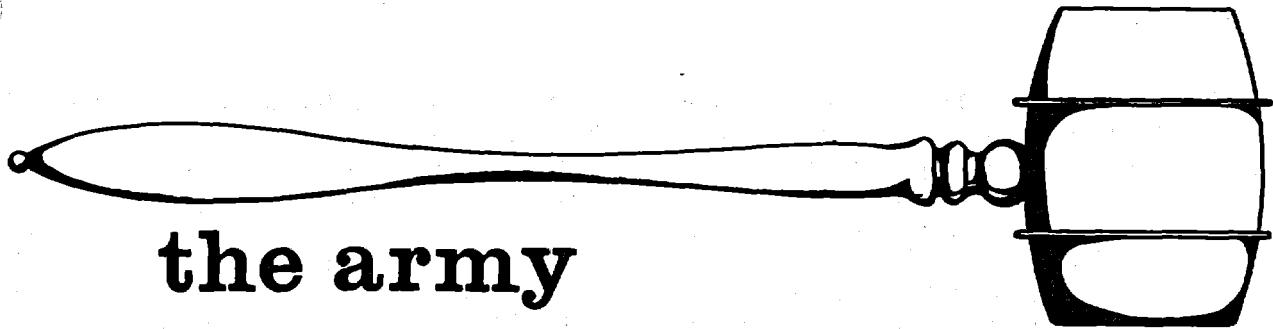


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*United States v. Grunden:*  
A Scalpel Not an Ax

*Statement of the Honorable Albert B. Fletcher, Jr., Chief Judge, United States Court of Military Appeals, 2 March 1978, before the Subcommittee on Secrecy and Disclosure, Senate Select Committee on Intelligence.*

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A dilemma exists—either really or potentially—for every major law enforcement office in the United States: what to do when the investigation and criminal trial of an individual will involve revelation in that usually public forum called a courtroom of documents or information which the intelligence community of this country has classified as not subject for public consumption. There are two basic variations to the predicament. The first is the case where material in the possession of one party or the other is to be used in court on the merits of the trial. Such situation presents itself, for instance, when the prosecution needs such material as a key element of its case, either to reflect the information leaked or conveyed to a foreign government or to show how the information that was leaked or conveyed damaged our national security. It also arises when the defense intends to reveal such material in presenting an affirmative defense. The second is the situation where the defense wants to discover the material in the course of preparing and presenting its case.

The Federal Government almost unfailingly has abided by an all-or-nothing approach to this problem along both of these avenues. My understanding is that the Federal Bureau of Investigation, apparently, will not even investigate a "leak" case unless the intelligence community will agree beforehand to declassify all information related to the case. I would venture that the frustration experienced by the Justice Department in its inability to successfully prosecute such cases because it was not provided the necessary evidence with which to do so is great. And nearly everytime that the defense rattles its saber implying that its case will necessarily thrust into matters bearing even tangentially upon national security, the matter is quietly dropped.

The unwillingness to compromise to some degree in either of these situations leads to the same result: the case against a suspect or defendant is terminated. However, if either of these aspects is permitted to abort the further investigation and prosecution of any criminal case, justice is thwarted and the entire nation is the loser.

Just as the problem centers around the judicial proceeding, so, it seems to me, must the answer to that problem, for if provision can be made at trial so that the secrecy of the material retains its integrity and, at the same time, the

basic rights of the defendant are safeguarded, the competing interests are neutralized. As I have indicated, it appears that there are two basic variations to this problem: use at trial, usually by the Government, and discovery by the defense of material possessed by the intelligence community. Accordingly, the response of the judiciary will vary depending upon which variation of the problem arises.

A possible judicial solution when the Government seeks to close the proceedings in order to protect its information from compromise was outlined by the majority of the United States Court of Military Appeals in its recent decision in *United States v. Grunden*, 25 U.S.C.M.A. 327, 54 C.M.R. 1053, 2 M.J. 116 (1977). Under *Grunden*, the judge must make a two-part inquiry whenever the Government presents such a motion. His initial task, reduced to its simplest terms, is to determine whether the material in question has been classified by the proper authorities in accordance with the appropriate regulations. As I said in writing the majority opinion, "It is important to realize that this initial review by the trial judge is not for the purpose of conducting a de novo review of the propriety of a given classification." In other words, he does not look *behind* the classification; rather, he is concerned only with whether proper authorities acting pursuant to proper authorization classified the material.

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Once he concludes in the affirmative, his second inquiry is how much of the proceeding needs to be closed in order to protect the material. As the Court emphasized, the judge must not employ "an ax in place of the constitutionally required scalpel." Only those portions of the trial in which references will be made to classified information may be closed. This means not only that witnesses who make no such references must testify in open court, but that even those witnesses who do address such material must appear in open court when rendering unclassified testimony. In so holding, the Court concluded, "This bifurcated presentation of a given witness' testimony is the most satisfactory resolution of the competing needs for secrecy by the government, and for a public trial by the accused."

It has been suggested that to restrict the judge from piercing the veil of the classification presents some risk that the Government will invoke the privilege frivolously or out of self-interest. But this risk seems minimal to me, when carefully considering what the Government obtains from the privilege: simply a trial which at some stages is closed to the public. In other words, it gets nothing except protection of its secret from public disclosure and gains no practical trial advantage over the defendant. Thus, I believe the incentive to act other than responsibly in this regard is not great.

My conviction that this minimal risk is worth running is reinforced when I consider the practical and legal quagmire involved in permitting the judge to rule on the propriety of designating a document classified as a state secret. It must be remembered that a trial judge has no special expertise in the area of national defense or foreign policy, and there are a host of practical difficulties of which this committee already is aware inherent in any approach for the court to obtain such expertise through such vehicles as panels of experts. Additionally, there is legitimate argument of some force that this matter of security classification is an Executive concern constitutionally and ought to remain so, especially in light of a viable, *Grunden*-type alternative.

I believe that where the Government seeks to gain judicial protection of its classified secrets in a judicial proceeding, the *Grunden* rationale presents an eminently viable procedure which assures both parties the greatest reconciliation of their respective rights.

When the problem arises from a defense initiative for discovery of classified information or documents, the procedure I believe needs to be followed is found in the United States Supreme Court decision of *Alderman v. United States*, 394 U.S. 165 (1969). My reading of the relevant portion of the majority opinion, reflecting the views of five of the eight justices who participated in the decision, is as follows. Whenever the defense seeks access, to which the Government objects, to a body of information or documents for preparation of its case, the judge initially will determine the relevance of that type of evidence.

Once, however, the judge determines that a particular type of material is relevant, the defense must have access to all requested information of that type. No one, not even the trial judge, is permitted to examine each particular item and to test for relevance to the defense. Mr. Justice White, in writing the majority opinion, well articulated the rationale leading to this conclusion. I will not take this committee's time discussing it; suffice it to say, it is an opinion most trial attorneys can well appreciate.

I should add that the ultimate responsibility for the protection of the integrity of classified documents used in connection with judicial proceedings rests with the judge. He can and should place all parties and court personnel under enforceable orders against disclosure not authorized by the court. To this end, stiff sanctions must be at the disposal of the judge to back-up his orders. As Mr. Justice White stated in *Alderman*, "We would not expect the district courts to permit the parties or counsel to take these orders lightly."

I believe that *Grunden* and *Alderman* present reasonable and effective procedures to meet the competing needs of the Government

and the criminal accused. They permit the machinery of justice to run its natural course

unhindered and, at the same time, respect and protect the security interests of this country.

## Federal Retirement Benefits in Texas

*Captain Brian Corrigan, JAGC, USAR*

*While this article focuses on the law of the State of Texas, it should be of interest to legal assistance officers as it indicates a trend in the community property jurisdictions. Texas, California and Arizona have adopted the "contingency property right" concept set forth in this article. Other community property jurisdictions may follow this trend. Judges in non-community property states also may be expected to consider contingent property rights when faced with the question of how to divide marital property which encompasses anticipated retirement benefits of a member of the armed forces.*

### **TEXAS RULES GOVERNING DIVISION OF VESTED AND NON-VESTED FEDERAL RETIREMENT BENEFITS AS CONSTITUTING COMMUNITY OR SEPARATE PROPERTY.**

#### **FEDERAL RETIREMENT BENEFITS: COMMUNITY PROPERTY OR SEPARATE PROPERTY?**

In accordance with the Texas Family Code,<sup>1</sup> "In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage." Consequently, all community property and separate property (both of which are defined in Section 5.01 of the Texas Family Code<sup>2</sup>) owned by the husband and wife at the time of obtaining a divorce are subject to court division. Property possessed by either spouse during or on dissolution of marriage is presumed to be equally owned by both parties as community property.<sup>3</sup> According to Texas law, retirement benefits accrued by either spouse during the marriage relationship constitute earned property rights presumably belonging to the community estate and, as such, are subject to being distributed to both spouses when the marriage is dissolved.<sup>4</sup> To overcome the presumption of Section 5.02 of the Texas Family Code that property possessed by either spouse during marriage is community property, the spouse claiming that such property is his separately owned property must

trace and clearly identify the property claimed as separate.<sup>5</sup> It has been held that benefits paid upon retirement are not "gifts" which would constitute separate property, even though the recipient of the retirement plan made no contribution in money to the accumulation of such benefits; such benefits are "community property," provided they are acquired during marriage.<sup>6</sup> Furthermore, federal military disability retirement benefits (as opposed to VA compensation payments for service connected disabilities<sup>7</sup>) are community property and subject to division on divorce where such benefits accrued during marriage.<sup>8</sup> However, a pension fully earned before marriage, even if not paid until after marriage, is the separate property of the person "earning" the pension.<sup>9</sup> Retirement benefits should be considered the separate property of the employee spouse when earned (1) after marriage but in a common-law state,<sup>10</sup> or (2) after divorce.<sup>11</sup> If, at the time of divorce, as in *Webster v. Webster*,<sup>12</sup> the parties had been married for twenty (20) years as legal residents of a community property state and the husband had served in the U.S. military service during that entire period and also had served for an additional four year period prior to the marriage, the community interest in the military retirement plan would be properly computed at 20/24ths, of which the wife would be entitled to 10/24ths as her community property interest. In the *Webster* case presumably the parties were legal residents of a community property state during the entire period of coverture, as

the husband (upon whom the burden rested) failed to assert that they had been domiciled in a noncommunity property state.<sup>13</sup> The trial court, in *Gaulding v. Gaulding*,<sup>14</sup> erroneously held in divorce proceedings that the entire federal retirement annuity earned by the husband, who, with his wife, spent approximately seventeen (17) years in common-law states, was community property, despite the Texas rule reiterated in *Parson v United States*,<sup>15</sup> that property acquired as separate in other states remains separate when the parties later move to Texas; i.e., "Under Texas law, property acquired by a husband and wife in another state prior to their moving to Texas will retain the character of ownership it had in the state from which it was removed." In *Gaulding* the husband appealed from the trial court's award to the wife of one-half of all future federal civil service retirement pension earned by the husband. Such appeal was to no avail as the Texas Court of Civil Appeals ruled that, although the trial court erred in construing the entire government retirement as community property, such error was harmless in that the court was authorized to award the wife, Mrs. Gaulding, a portion of the husband's separate property in bringing about a fair division, and the husband did not attack the judgment as being unjust and unfair, having due regard to the rights of each party. Consequently, the lower court was authorized to award Mrs. Gaulding a portion of Mr. Gaulding's separate property in bringing about a fair and just division of the property. In *the Matter of the Marriage of J. R. McCurdy and Frances Helen McCurdy*,<sup>16</sup> the court said it is "... well settled that in making the division of the property the court may consider the disparity of the earning power of the parties, as well as their business opportunities, capacities and abilities." So when a divorce is obtained in Texas, even though the retirement benefits are classified as being fully the separate property of the employee spouse, the court may award the nonemployee spouse a portion of such separate pension benefits provided the award is just and right under the circumstances and does not constitute an abuse of discretion.<sup>17</sup> Furthermore, the court could also award one spouse a much larger share of the community

property retirement in accomplishing a fair and just division of the property.<sup>18</sup>

#### PROPERTY STATUS OF NONVESTED FEDERAL RETIREMENT BENEFITS.

*Prior Law: Necessity that the Retirement be Vested Regardless of Whether Presently Payable or Not Payable.*

Historically, under Texas case law holdings, in order for a right to retirement benefits to constitute property subject to division between the divorcing parties by a divorce court, such retirement benefits must have been vested at the time of the divorce.<sup>19</sup> That is, if a military member, at the time a divorce was being granted, had been in the federal employ for only nine of the necessary twenty years required for an entitlement to a pension, the Texas court would have held that such anticipated retirement benefit was not subject to being awarded to either spouse as it fails to constitute property in that it is not a presently vested property right but is merely an expectancy.<sup>20</sup> Consequently, the Texas rule was that, if a divorce was granted prior to the vesting of a retirement, the nonmilitary spouse would not be entitled to any share of the military spouse's future retirement even if such military spouse should, in fact, thereafter accrue a vested retirement by staying in the service after the divorce for another ten years and actually begin drawing a federal pension.<sup>21</sup> Generally, as long as the member has served the requisite number of years which would entitle him to elect to retire or be eligible to retire, the retirement is vested regardless of whether the member actually retires.<sup>22</sup> The fact that military pension benefits are subject to divestment under certain conditions does not reduce such property right to a mere expectancy.<sup>23</sup> When the federal employee has signed a contract which, if fulfilled, would make him eligible to retire (i.e., as in *Miser v. Miser*,<sup>24</sup> wherein an enlisted military man signed a three-year reenlistment contract at a time when he had already completed eighteen years of federal service) or is an officer with at least eighteen years of military service (as in *Schappell v. Schappell* wherein the evidence clearly

established that once an Army officer completes eighteen years of service, military regulations guarantee his right to two more years' service so that he would fully earn his retirement benefits—the only exception being his own misconduct or his determination to terminate his service by resignation), then the future retirement benefit, although not yet payable, is vested due to accrual and, as such, is subject to division by the divorce court. Conversely, under this theory of Texas law, if the retirement benefit had not been vested at the time of divorce but, years afterwards, became a vested property right, the nonfederal retiree former spouse could not successfully file for and obtain a share of the ex-spouse's federal retirement benefits. The reason being that, since the retirement was not vested at the time of the divorce, it did not become "property" until after dissolution of the marriage and could not later be retroactively classified and divided as property acquired during the prior coverture.<sup>25</sup> However, if the retired member had earned the right to a vested pension at the time of divorce, and the divorce decree was silent as to any division of same, an innumerable period of days, months or years later the nonretiring former spouse could successfully file for his or her share of a community property asset (to wit: the retirement benefit in effect jointly owned as tenants-in-common) which was not disposed of as a property asset during the prior divorce proceeding.<sup>26</sup> California law does not differ from Texas law on this point in that the California courts have also ruled that a former spouse is not barred from later on partitioning a community interest in a pension over which the issue of property right division was not litigated during the divorce proceedings.<sup>27</sup>

*Present Law: Nonvested Retirement Benefits Constitute (1) Mere Expectancies Failing to Qualify as Present Community Property Subject to Division? or (2) Contingent Interests in Community Property Subject to Division Upon Dissolution of Marriage?*

After appearing to be well-settled Texas law that, as long as a right to a retirement pension had not vested, such potential retirement pension failed to constitute a property asset sub-

ject to being divided between the divorcing spouses by a court of competent jurisdiction,<sup>28</sup> the Texas Supreme Court, in *Cearley v. Cearley*,<sup>29</sup> decided, on December 15, 1976, to entirely eliminate the vested versus nonvested issue and adhere to the recent decision of the California Supreme Court in *Brown v. Brown*,<sup>30</sup> that nonvested pension rights are not an expectancy but a contingent interest in property—i.e., that pension rights, "whether or not vested, represent a property interest; to the extent that such rights derive from employment during coverture, they comprise a community asset subject to division in a dissolution proceeding." The Texas Supreme Court in *Cearley* went on to reaffirm the 1969 New Mexico Supreme Court rule of *LeClert v. LeClert*<sup>31</sup> that, although a servicemember's military pension is not payable before the date of its maturity, it is not "earned" on that day but rather is a form of deferred compensation which is earned during each month of his or her military service. "The portion earned during the months of coverture became contingent earnings of the community which may or may not bloom into full maturity at some date. We hold that such rights, prior to accrual and maturity, constitute a contingent interest in property and a community asset subject to consideration along with other property in the division of the estate of the parties under Section 3.63 of the Family Code."<sup>32</sup> The facts of this important case are as follows: The Cearleys were divorced on June 3, 1975. At the time of the divorce, the husband,

Robert L. Cearley, had served for nineteen years as an enlisted man in the Air Force during which period he and Shirley had been married for eighteen years. Robert was to have completed the twenty years necessary for receipt of retirement benefits on May 7, 1976, and his enlistment at the time of the divorce extended to August 3, 1976. The trial court ordered that "If and when Robert L. Cearley . . . retires and receives a retirement benefit, then, in such an event, the Petitioner (Shirley Cearley) is to receive one-half (½) of the eighteen of the fraction of the number of years of active service until

retirement . . . " The Court of Civil Appeals reversed and rendered only that portion of the judgment awarding the wife a share of the contingent retirement benefits. Tex. Civ. App. 536 S.W.2d 96.

The Supreme Court of Texas reversed the judgment of the Court of Civil Appeals' decision in *Cearley* and affirmed the judgment of the trial court. The Texas Supreme Court did not rule that Mrs. Cearley was entitled to a share of her husband's retirement on the basis of his reenlistment contract making his retirement a twenty-year vested interest as the Court of Civil Appeals did in *Miser v. Miser*, but simply ruled that the husband's right to a military pension, prior to accrual and maturity, constituted a contingent interest in property and a community asset subject to consideration in dividing the estate of the parties upon the dissolution of their marriage. In other words, the retirement need not be vested to constitute property. Consequently, in a situation involving an officer or an enlisted person who marries the same day he joins the military service; maintains his domicile in a community property state; continually remains in the service and, subsequently, divorces in Texas on his tenth wedding anniversary, the Texas Court could legally require payment to the former spouse, as her share of the community property acquired during coverture, of one-half of the fraction of ten over the number of years of active duty actually served by her former spouse prior to his retirement. For example, if the military member retires after twenty years of service, his former spouse would be entitled, as her share of the community property, to one-half of ten-twentieths, (i.e., one-fourth) of her former spouse's retirement pay. The portion of the retirement benefits to be paid to the former spouse should be calculated on the servicemember's rank or grade at the time of the divorce and not on the basis of subsequent promotions.<sup>33</sup> The spouse's share of the retirement is not alimony but is her share of the marital property<sup>34</sup> and, as such, will continue for the rest of her life or his life (whichever terminates first) regardless of how many times she remarries or how independently wealthy she

becomes so long as he continues to be eligible to receive his military retirement.<sup>35</sup> Of course, these very same rules apply when the federal member is the female and the nonfederal member is a male<sup>36</sup>—i.e., a divorcing husband could receive a portion of his estranged wife's federal retirement benefits pursuant to the court's division of the property. Unlike the California case of *Brown v. Brown*, which specified non-retroactive application to all final judgments dividing marital property rendered prior to the decision in *Brown*, the *Cearley* case is silent as to any retroactive application of its ruling. The Texas Supreme Court, in *Taggart v. Taggart*,<sup>37</sup> retroactively applied the principles of *Cearley* in granting a wife a portion of her husband's military retirement which vested six years after their divorce had been granted in 1968. In *Taggart*, neither the divorce decree nor the property settlement agreement provided for a division of the husband's future military retirement benefits. Had Mrs. Taggart sought a portion of same at the time of the divorce (1968), the court, in accordance with prevailing law at that time, would have held that the retirement was not yet vested, hence it did not constitute community property subject to division. Consequently, *Cearley v. Cearley* apparently does apply retroactively at least to those previously granted divorce cases wherein the decrees are silent on any award of future military retirement benefits, regardless of whether the retirements were vested or nonvested at the time of the divorce. In view of the fact that the right to partition retirement benefits jointly owned is a continuous one, there is no statute of limitations applicable, and an action to partition may be brought at anytime.<sup>38</sup> Thus, retroactive application of the *Cearley* decision, as pointed out in Justice Yarbrough's dissent of the *Taggart* case, does open a Pandora's Box with regard to Texas divorces silent on the disposition of retirement benefits.<sup>39</sup> In light of all of the above, before contemplating divorce proceedings in Texas, a federal member, male or female, should consider the fact that not only may the court award the divorcing spouse (male or female) a portion of the federal member's retirement on the basis of the

spouse's community interest in the same, but also, as stated previously herein, the court may, in the exercise of reasonable discretion, properly award the divorcing spouse a portion of the federal member's retirement which was solely the separate property of the federal member.<sup>40</sup> Actually, the authority of the court to award any of the separate property portion of the federal member's retirement to the other divorcing party (as in *Gaulding*) may no longer exist in light of the recent Texas Supreme Court decision of *Eggemeyer v. Eggemeyer*<sup>41</sup> which held that the trial court therein, during divorce proceedings, was unauthorized to divest title to separate realty belonging to one spouse and place title to same in the name of the other divorcing party in that the nature of property is fixed by Article I, Section 19, of the Texas Constitution and not by Section 3.63 of the Texas Family Code on what is "just and right" in the division of the property at the time of divorce. Whether this same ruling will apply to retirement benefits, as well as real estate, remains to be seen, but the case does have far-reaching implications.<sup>42</sup>

In summation, both vested and nonvested pension rights constitute a proprietary interest and are either (1) community property, to the extent such rights were derived from employment during the parties' marriage while domiciled in a community property state, or (2) separate property, to the extent such rights were derived from employment before the parties' marriage or after the parties' divorce, or were derived during the parties' marriage but while the parties were domiciled in a noncommunity property state. The right to portions of a federal vested or nonvested pension, which is derived under any of the situations delineated in the immediately preceding sentence, constitutes (prior to full accrual and maturity of the pension at some future date) a contingent interest in property and a community or separate property asset subject to consideration, along with other property, in dividing the estate of the parties on dissolution of marriage in Texas.

## GARNISHMENT OF FEDERAL INCOME FOR CHILD SUPPORT AND ALIMONY OBLIGATIONS IN TEXAS.

### *Federal Garnishment Act.*

On 4 January 1975, President Ford signed into law the Social Services Amendments of 1974, Public Law 93-647. A new Section 459 was thereby added to the Social Security Act.<sup>43</sup> This section waives the sovereign immunity of the United States and allows garnishment or attachment proceedings against the United States for the enforcement of child support and alimony obligations of all federal employees, including active duty military, reserve, and retired federal members. Subject Federal Law (Public Law 93-647) allows for garnishment of a federal employee's pay only if allowed in the State wherein the party entitled to support (or alimony) has attempted to obtain a writ of garnishment and jurisdiction will lie in the state court rather than the federal court.<sup>44</sup> Both Texas Constitutional Article 16, Section 28, and Texas Statutory Article 4099 expressly prohibit the obtainment of writs of garnishment on current wages for personal service. Consequently, Texas Courts will reject applications for writs of garnishment on current wages as Texas substantive law precludes current wages for personal service from being subject to attachment.<sup>45</sup> However, there is no Texas Constitutional article or Texas statute precluding federal pensions from being subject to garnishment.

### *Texas Garnishment and Family Laws: Garnishment.*

In general, attachment is a provisional or auxiliary remedy, created by statute, whereby a creditor can obtain a contingent lien on property of the debtor, and thus have subject property kept available to satisfy any judgment which he may recover against the debtor; it is in the nature of an anticipatory execution levied on the property of the debtor.<sup>46</sup> Attachment is, therefore, distinguished from garnishment, which reaches goods, chattels, credits, and effects belonging to the debtor in the hands of a third person.<sup>47</sup> Garnishment usually is considered to be a form of attachment.<sup>48</sup>

However, it is not an actual seizure or levy; rather it is a judicial command to a third person (garnishee) to hold the property or credits due to the debtor, subject to the claim of the creditor.<sup>49</sup> With respect to federal pay in the context of wife and child support, the United States occupies the position of a third party. The federal statute contemplates garnishment actions, rather than mere attachment, whereby money owed by the United States to its employees is sought to be subjected to legal process for the enforcement of child support and alimony.

**Exemptions.** As stated hereinbefore, current wages for personal services are not garnishable in the State of Texas—Article 16, Section 28, Texas Constitution, and Articles 4099 and 3836 (a) (7), Revised Civil Statutes of Texas, exempt current wages for personal services from garnishment. The purpose of these provisions is to exempt wages from legal seizure until they are due and in the possession of the wage earner.<sup>50</sup> The cited constitutional provision provides that “no current wages for personal services shall ever be subject to garnishment.” For purposes of garnishment, the term “wages” is synonymous with “salary.”<sup>51</sup> The word “current” limits and restricts the word “wages” as used in the constitution and statutes and qualifies the latter since wages that are not “current” are not exempt. Wages that are current are payments for personal services made periodically or from time to time as the services are rendered or the work is performed, as when the services are to be paid for by the hour, day, week, month, or year.<sup>52</sup> This exemption is clearly applicable to the currently accruing federal pay of active duty military service members and federal civil servants. The court, in *Ables v. Ables*, previously held that the retirement pay of regular officers (as well as that of reserve officers) does not constitute current wages in compensation for the contingency of being recalled to active duty, but is a property right for past rendered services subject, as such, to court division at the time of divorce. Nonetheless, there had been no Texas case answering the question of whether military retired pay constitutes current wages for per-

sonal services *within the meaning of the exemptions from garnishment* until the recent decision of *United States v. Stelter*<sup>53</sup> which held that such pay is garnishable. Current wages for personal services to nonresident military members stationed in Texas are not subject to garnishment by a court in Texas in that the Texas Supreme Court has held that, with respect to Texas garnishment actions, the law of the forum (Texas) should apply in determining the rights of the parties.<sup>54</sup>

**Family Law: Alimony.** In Texas, a court may not impose an order of alimony as to do so would contravene public policy.<sup>55</sup> However, after a petition for divorce is filed, the trial court may order payment of temporary support for the wife, or for the support of the husband if he is unable to support himself, until a final decree is entered.<sup>56</sup>

**Enforcement of Child Support and Temporary Alimony Orders.** The remedies available in Texas for nonpayment of child support or of temporary alimony or of the former spouse's interest in a pension are contempt, under the inherent powers of the court which awarded the child support, interest in the pension or alimony,<sup>57</sup> or pursuant to the Uniform Reciprocal Enforcement of Support Act,<sup>58</sup> or possibly by judgment for accrued arrearages in child support,<sup>59</sup> or by judgment for accrued arrearages in the unusual case of a contractual support agreement and “alimony payments.” Execution will not lie to enforce the payment of temporary alimony as it does not constitute “debt.”<sup>60</sup> The award by a Texas divorce court of a portion of a community property interest in a military retirement plan is a division of the marital estate rather than an award of child support or alimony.<sup>61</sup> Article 14.09 (c) of the Texas Family Code authorizes a judgment on child support arrearages to be enforced by any means available for the enforcement of judgments for debts - which would include garnishment. Only past due amounts over which a judgment has been obtained may be successfully garnished in Texas, so that a garnishee cannot be required to pay *future* monthly installments to the obligated party as the installments should fall due.<sup>62</sup> Therefore, gen-

erally and presently speaking, if the parent having custody as well as the obligated absent parent are both living in Texas, apparently a writ of garnishment on a judgment of child support arrearage (but not on future amounts to fall due) *may* be obtained only if the obligated party is the recipient of federal retirement pay. However, presently no case has been decided on this point in Texas. In order for a Texas child support recipient to obtain a writ of garnishment on the non-Texas resident's current wages based on a judgment of child support arrearage, application for such a writ would have to be made outside of Texas in a state permitting garnishment of current wages. If the active duty member, as well as the former spouse entitled to child support both reside in Texas, and the former spouse goes to another state for the purpose of obtaining a writ of garnishment on the active member's current pay, such writ would be in contravention of Texas case law prohibiting garnishment via "the back door" when it is not permitted "by way of the front door," — *i.e.*, the courts will treat such proceedings as an attempt on the part of the garnishor to evade the constitution and statutes of this state.<sup>63</sup> As far as alimony is concerned, there is no permanent alimony in Texas, but pensions are considered to be community property whereby a divorced spouse may have an interest in the retirement pay of a federal employee. It has been held that an award of the community property interest in the retirement does not constitute an award of alimony.<sup>64</sup> Whether Texas courts would construe this community property interest to be synonymous with alimony for purposes of garnishment under Public Law 93-647 was considered debatable, but not probable, until the Texas Court of Civil Appeals held in *United States v. Stelter*<sup>65</sup> that such right to a share of the retirement is tantamount to alimony for purposes of federal statutes securing enforcement of state alimony awards. Consequently, unlike the situation involving temporary alimony wherein the sole remedy for nonpayment consists of contempt action filed against the noncomplying spouse (as illustrated in *Stelter*), when the divorced pensioner fails to pay his former spouse her share of the retirement

as awarded by a court of competent jurisdiction, the noncomplying federal pensioner's retirement may be successfully garnished. Furthermore, the court, in *Collida v. Collida*,<sup>66</sup> allowed a spouse upon divorce to be awarded her share of the community property retirement on a continuing future basis directly from the former employer, who was brought in as a party to the divorce action, each month *without* requiring that she garnish same. In fact, Mr. Collida's fireman retirement pay was exempt from garnishment and assignment, in accordance with a Texas statute.<sup>67</sup> The court, in *Collida*, went on to discuss *United States v. Smith*,<sup>68</sup> wherein a former wife, who, upon divorce was awarded a community interest in her husband's army retirement, unsuccessfully sought to have the Army Finance Center ordered to directly mail her said share which she was entitled as per the prior divorce judgment. The court, in *United States v. Smith*, decided, prior to the enactment of Public Law 93-647, that no portion of the retired military member's monthly retirement could be assigned directly to a former spouse as her share of the community property, because this would be a violation of the Anti-Assignment Act, 31 U.S.C. §203 and, furthermore, the United States had not been made a party to the divorce suit. Along this same line, a Texas court previously decided that a wife's award of a community interest in her former husband's Air Force retirement did not amount to an assignment of federal pay in violation of 31 U.S.C. §492 in that the payment of said share was ordered to be paid to her by her former husband and not ordered to be made payable directly to her from the United States Air Force.<sup>69</sup> It was also decided in a 1964 opinion of the Comptroller General<sup>70</sup> that a court order, (issued incident to property settlement in a divorce action) directing that a portion of the retired pay due an Army officer be paid monthly to his divorced wife for support and maintenance, was not binding on the United States inasmuch as the government was not a party to the action and, under the provisions of 31 U.S.C. §492, the retired pay due an officer is not subject to attachment or garnishment proceedings issued in behalf of a defendant in a divorce action. All of

these decisions were rendered prior to the enactment of Public Law 93-647, which allows current federal pay and federal retirement to be garnished directly from the United States government "Notwithstanding any other provision of law . . .". Therefore, if the United States is made a party to divorce proceedings wherein a spouse is granted a community share in the husband's federal retirement, in light of Public Law 93-647, *United States v. Stelter*<sup>71</sup> (wherein the community interest is tantamount to alimony under Public Law 93-647) and the *Collida v. Collida*<sup>72</sup> ruling that the spouse is neither a creditor nor assignee of her former husband, possibly the United States government could be required to pay on a monthly basis, directly to the divorced spouse, her or his share of a federal retirement. However, see footnote 64 herein, referencing *Kelley v. Kelley*, and a recent amendment to the enabling federal garnishment legislation, Public Law 95-30, which makes this possibility very unlikely.

*Impact of Section 459 - Public Law 93-647: Meaning of Federal Statute.* Section 459, as amended, of the Social Securities Act subjects federal pay to garnishment "in like manner and to the same extent as if the United States or the District of Columbia were a private person." It does not create any new remedies for the enforcement of child support or alimony, but, instead, simply makes federal pay subject to garnishment in the manner and to the extent that pay due from private employers is subject to garnishment.

*Conclusions.* The general unavailability in Texas of garnishment as a remedy for nonpayment of temporary alimony together with the exemption from garnishment of current wages for personal services, presently effectively insulates federal personnel in Texas from garnishment of their current federal pay. In addition, while Texas courts may accord full faith and credit to valid foreign judgments granting permanent alimony<sup>73</sup> or child support,<sup>74</sup> and grant a judgment for arrearages, nonetheless, because of the constitutional and statutory exemptions, the post-judgment remedies would not include garnishment of current wages.

However, there is no Texas Constitutional Article or statutory provision exempting federal retirement pay from garnishment. Public Law 95-30 (42 U.S.C. §662) apparently prohibits (unlike Public Law 93-647) a former spouse from successfully garnishing her husband's retirement pay on her share of said pension, but there is no reason why federal retirement pay in Texas cannot be successfully garnished for child support arrearages.

### Notes

1. Family Code, V.T.C.A., § 3.62.
2. Family Code, V.T.C.A., § 5.01, "Separate and Community Property—Marital Property Characterized. (a) A spouse's separate property consists of: (1) the property owned or claimed by the spouse before marriage; (2) the property acquired by the spouse during marriage by gift, devise, or descent; and (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage. (b) Community property consists of the property, other than separate property, acquired by either spouse during marriage."
3. Family Code, V.T.C.A., § 5.02.
4. *Williamson v. Williamson*, 457 S.W.2d 311 (Tex. Civ. App. - Austin, 1970, no writ); *Herring v. Blakely*, 385 S.W.2d 843 (Tex. Sup. 1965).
5. *Cockerham v. Cockerham*, 514 S.W.2d 150 (Tex. Civ. App. - Waco, 1974, *aff'd in part and rev'd in part on other grounds*, 527 S.W.2d 162); *Fulton v. Duhaime*, 525 S.W.2d 62 (Tex. Civ. App. - Houston, 1975, writ ret. n.r.e.).
6. *Marks v. Marks*, 470 S.W.2d 83 (Tex. Civ. App. - Tyler, 1971, writ ref. n.r.e.); *Kirkham v. Kirkham*, 335 S.W.2d 393 (Tex. Civ. App. - San Antonio, 1960, no writ); *Davis v. Davis*, 495 S.W.2d 607 (Tex. Civ. App. - Dallas, 1973, writ dismissed).
7. *Ramsey v. Ramsey*, 474 S.W.2d 939 (Tex. Civ. App. - Eastland, 1971, writ dismissed).
8. *Matter of Marriage of Butler*, 543 S.W.2d 147; *Dominey v. Dominey*, 481 S.W.2d 473 (Tex. Civ. App. - El Paso, *cert. denied*, 409 U.S. 1028); *Busby v. Busby*, 457 S.W.2d 551 (Tex. Sup. 1970).
9. *Johnson v. Johnson*, 23 S.W. 1022 (Tex. Civ. App. - San Antonio, 1893, no writ); *Moore v. Moore*, 192 S.W.2d 929 (Tex. Civ. App. - Fort Worth, 1946, no writ); *Herring v. Blakeley*, 385 S.W.2d 843 (Tex. Sup. 1965).
10. *Mitchim v. Mitchim*, 509 S.W.2d 720 (Tex. Civ. App. - Austin, 1974), *rev'd on other grounds*, 518 S.W.2d 362; *Schappell v. Schappell*, 544 S.W.2d 807 (Tex. Civ. App. - El Paso, 1976, no writ).

11. *Mora v. Mora*, 429 S.W.2d 660 (Tex. Civ. App. - San Antonio, 1968, writ dismissed); *In re Rister's Marriage*, 512 S.W.2d 72 (Tex. Civ. App. - Amarillo, 1974, no writ).
12. *Webster v Webster*, 442 S.W.2d 786 (Tex. Civ. App. - San Antonio, 1969, no writ).
13. As a matter of note, there are eight community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington, 15A AM. JUR. 2d *Community Property* §1.
14. *Gaulding v. Gaulding*, 503 S.W.2d 617 (Tex. Civ. App. - Eastland, 1973, no writ).
15. *Parson v. United States*, 460 F.2d 228 (5th Cir. 1972).
16. *Matter of the Marriage of J. R. McCurdy and Frances Helen McCurdy*, 489 S.W.2d 712 (Tex. Civ. App. - Amarillo, 1973, writ dismissed).
17. *Gaulding v. Gaulding*, 503 S.W.2d 617 (Tex. Civ. App. - Eastland, 1973, no writ). However, this ruling granting the wife a portion of the husband's separate retirement may no longer be followed in light of *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. Sup. 1977), discussed later herein.
18. *Whittenburg v. Whittenburg*, 523 S.W.2d 797 (Tex. Civ. App. - Austin, 1975, no writ).
19. *Davis v. Davis*, 495 S.W.2d 607 (Tex. Civ. App. - Dallas, 1973, writ dismissed); *Bright v. Bright*, 531 S.W.2d 440 (Tex. Civ. App. - San Antonio, 1975, no writ).
20. *Lumpkins v. Lumpkins*, 519 S.W.2d 491 (Tex. Civ. App. - Austin, 1975, writ ref. n.r.e.).
21. *Davis v. Davis*, 495 S.W.2d 607 (Tex. Civ. App. - Dallas, 1973, writ dismissed.)
22. *Busby v. Busby*, 457 S.W.2d 551 (Tex. Sup. 1970); *Mora v. Mora*, 429 S.W.2d 660 (Tex. Civ. App. - San Antonio, 1968, writ dismissed); *Ables v. Ables*, 540 S.W.2d 769 (Tex. Civ. App. - Waco, 1969, no writ).
23. *Busby v. Busby*, 457 S.W.2d 551 (Tex. Sup. 1970).
24. *Miser v. Miser*, 475 S.W.2d 597 (Tex. Civ. App. - Dallas, 1971, writ dismissed).
25. *In re Rister's Marriage*, 512 S.W.2d 72 (Tex. Civ. App. - Amarillo, 1974, no writ); but see the recent Texas Supreme Court decisions of *Cearley v. Cearley*, 544 S.W.2d 661 (Tex. Sup. 1976) and *Taggart v. Taggart*, 552 S.W.2d 422 (Tex. Sup. 1977), discussed later herein, which apparently overrule this contention.
26. *Dessommes v. Dessommes*, 505 S.W.2d 673 (Tex. Civ. App. - Dallas, 1973, writ ref. n.r.e.); *Busby v. Busby*, 457 S.W.2d 551 (Tex. Sup. 1970); *Wilson v. Wilson*, 507 S.W.2d 916 (Tex. Civ. App. - Houston, 1974, no writ); *Clendenin v. Krock*, 527 S.W.2d 471 (Tex. Civ. App. - San Antonio, 1975, no writ); *Fulton v. Duhaime*, 525 S.W.2d 62 (Tex. Civ. App. - Houston, 1975, writ ret. n.r.e.).
27. *In re the Marriage of Celia and Loren Hatch Cobb*, 137 Cal. Rptr. 670 (1977).
28. *Davis v. Davis*, 495 S.W.2d 607 (Tex. Civ. App. - Dallas, 1973, writ dismissed).
29. *Cearley v. Cearley*, 544 S.W.2d 661 (Tex. Sup. 1976).
30. *Brown v. Brown*, 544 P.2d 561 (Cal. Sup. 1976).
31. *LeClert v. LeClert*, 453 P.2d 755 (N.M. Sup. 1969); however, neither *LeClert* nor *Wilder v. Wilder*, 534 P.2d 1355 (Wash. Sup. 1975) are as far-reaching as *Brown* or *Cearley*.
32. *Cearley v. Cearley*, 544 S.W.2d 661 (Tex. Sup. 1976).
33. *Schappell v. Schappel*, 544 S.W.2d 807 (Tex. Civ. App. - El Paso, 1976, no writ). See also 50 WASH. L. REV. 505, 525 (1975) for mathematical formula.
34. *Ex parte Sutherland*, 515 S.W.2d 137 (Tex. Civ. App. - Texarkana, 1974, writ dismissed). See also the same case in an original habeas corpus proceeding, 526 S.W.2d 536 (Tex. Sup. 1975).
35. *Ex parte Anderson*, 541 S.W.2d 286 (Tex. Civ. App. - San Antonio, 1976, no writ). See also 24 BAYLOR L. REV. 235, 248 (1972) wherein it is suggested that where the wife predeceases her serviceman husband, logically her heirs would be entitled to her community share of her husband's retirement pay. The Texas Court of Civil Appeals (San Antonio) in a case of first impression recently held that the deceased's heirs were entitled to his community interest in his surviving spouse's federal civil service retirement: *Valdez v. Ramirez*, \_\_\_ S.W.2d \_\_\_\_.
36. *Schappell v. Schappell*, 544 S.W.2d 807 (Tex. Civ. App. - El Paso, 1976, no writ).
37. *Taggart v. Taggart*, 552 S.W.2d 422 (Tex. Sup. 1977).
38. *Dessommes v. Dessommes*, 505 S.W.2d 673 (Tex. Civ. App. - Dallas, 1973, writ ref. n.r.e.).
39. As a matter of note, Justice Yarbrough, the sole dissenter from the *Taggart* majority opinion, resigned from the bench because of pending impeachment proceedings brought against him for alleged actions unrelated to his performance as a Texas Supreme Court Justice.
40. *Gaulding v. Gaulding*, 503 S.W.2d 617 (Tex. Civ. App. - Eastland, 1973, no writ).
41. *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. Sup. 1977).
42. See *Campbell v. Campbell*, 554 S.W.2d 10 (Tex. Civ. App. - Ft. Worth, 1977, no present writ hist.) See also the recent case of *Eichelberger v. Eichelberger*, 557 S.W.2d 587 (Tex. Civ. App. - Waco, 1977, no present

writ history), which held that the *Eggemeyer* decision applies only to realty whereas separate retirement may be awarded to either spouse.

43. Section 459, amended and cited in 42 U.S.C. § U.S.C. § 659:

Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due for, or payable by, the United States . . . to any individual, including members of the armed services, *shall be subject in like manner and to the same extent as if the United States . . . were a private person*, to legal process brought for the enforcement against such individual of his obligation to provide child support or make alimony payments.

(Emphasis supplied).

44. *Marin v. Hatfield*, 546 F.2d 1230 (5th Cir. 1977); *Wilhelm v. United States Dept. of Air Force Accounting and Finance Center*, 418 F. Supp. 162 (S.D. Texas 1976); *Morrison v. Morrison*, 408 F. Supp. 315 (N.D. Texas 1976).

45. VERNON'S ANN. TEX. CONST. art. 16, § 28; VERNON'S ANN. CIV. ST. art. 4099; VERNON'S ANN. CIV. ST. art. 3836 (a) (7).

46. *Lipscomb v. Rankin*, 139 S.W.2d 367 (Tex. Civ. App.—El Paso, 1940, no writ).

47. 6 TEX. JUR. 2D *Attachment* § 2.

48. *Snyder Motor Co. v. Universal Credit Co.*, 199 S.W.2d 792 (Tex. Civ. App.—Fort Worth, 1947, writ ref. n.r.e.).

49. 26 TEX. JUR. 2D *Garnishment* § 1.

50. *Lee v. Emerson-Brantingham Implement Co.*, 222 S.W. 283 (Tex. Civ. App.—Dallas, 1920, no writ).

51. *Radford (J.M.) Grocery Co. v. McKean*, 41 S.W.2d 639 (Tex. Civ. App.—Fort Worth, 1931, no writ).

52. 26 TEX. JUR. 2D *Garnishment* § 32.

53. *United States v. Stelter*, 553 S.W.2d 227 (Tex. Civ. App.—El Paso, 1977, writ granted).

54. *Bell v. Indian Live-Stock Co.*, 11 S.W. 344 (Tex. Sup. 1889).

55. *Francis v. Francis*, 412 S.W.2d 29 (Tex. Sup. 1967); *Gent v. Gmehier*, 435 S.W.2d 293 (Tex. Civ. App.—Waco, 1973, no writ).

56. Family Code, V.T.C.A., § 3.59.

57. *Ex parte Hooks*, 415 S.W.2d 166 (Tex. Sup. 1967); *Ex parte Anderson*, 541 S.W.2d 286 (Tex. Civ. App.—San Antonio, 1976, no writ); *Ex parte Sutherland*, 515 S.W.2d 137 (Tex. Civ. App.—Texarkana, 1974, writ dismissed).

58. *Strader v. Strader*, 517 S.W.2d 905 (Tex. Civ. App.—Waco, 1977, no writ); Family Code, V.T.C.A., § 21.39.

59. Family Code, V.T.C.A., § 21.04.

60. *Bagby v. Bagby*, 186 S.W.2d 702 (Tex. Civ. App.—Amarillo, 1945, no writ).

61. *Ex parte Sutherland*, 515 S.W.2d 137 (Tex. Civ. App.—Texarkana, 1974, writ dismissed); *Morris v. Morris*, 406 S.W.2d 550 (Tex. Civ. App.—Amarillo, 1966, no writ).

62. *Burkitt V. Glenney*, 371 S.W.2d 412 (Tex. Civ. App.—Houston, 1963, writ ref. n.r.e.).

63. *Morton v. Hull*, 13 S.W. 849 (Tex. Sup. 1890); 26 TEX. JR. 2D *Garnishment* § 31.

64. *Marks v. Marks*, 407 S.W.2d 83 (Tex. Civ. App.—Tyler, 1971, writ ref. n.r.e.).

65. *United States v. Stelter*, 553 S.W.2d 227 (Tex. Civ. App.—El Paso, 1977, writ granted). *But see* the federal case of *Marin v. Hatfield*, 546 F.2d 1230 (5th Cir. 1977), wherein the federal court did not have subject matter jurisdiction, but stated anyway that the community property pension share could not constitute alimony under Texas law so as to fall within the purview of garnishing federal retirement pay. Furthermore, Pub. L. 95-30, 42 U.S.C. § 662, effective June 1, 1977 (which, incidentally, was effective prior to the *Stelter* decision of June 22, 1977) defined alimony as excluding "any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses." *See also* the Louisiana case of *Kelley v. Kelley* and the United States Dep't. of Defense, U.S.A.F., 425 F. Supp. 181 (W.D. La. 1977), which holds the opposite of *Stelter*.

66. *Collida v. Collida*, 546 S.W.2d 708 (Tex. Civ. App.—Beaumont, 1977, writ dismissed).

67. VERNON'S ANN. CIV. ST. art. 6243e, § 13.

68. *United States v. Smith*, 393 F.2d 318 (5th Cir. 1968).

69. *Webster v. Webster*, 442 S.W.2d 786 (Tex. Civ. App.—San Antonio, 1969, no writ).

70. 44 Comp Gen. 86 (1964).

71. *United States v. Stelter*, 553 S.W.2d 227 (Tex. Civ. App.—El Paso, 1977, writ granted).

72. *Collida v. Collida*, 546 S.W.2d 708 (Tex. Civ. App.—Beaumont writ dismissed).

73. *Moody v. Moody*, 465 S.W.2d 836 (Tex. Civ. App.—Corpus Christi, 1971, writ ref. n.r.e.).

74. *Stubblefield v. Stubblefield*, 272 S.W.2d 633 (Tex. Civ. App.—Texarkana, 1954, no writ).

## Educational Opportunities for Legal Clerks and Court Reporters

*MSG Gunther Northnagel, MILPERCEN, CW 2 Larry Turner, USAIA, and MAJ Peter Plaut, TJAGSA*

Formal military training for legal clerks and court reporters begins with introductory courses at Fort Benjamin Harrison and the Naval Justice School. The next programmed school training for enlisted legal personnel is the Advanced NCO Course taught at Fort Benjamin Harrison for E-6 level soldiers. Legal clerks and court reporters often inquire about what else is available in the way of resident and nonresident education. There are several courses. This summary is not exhaustive, but describes the principal programs available for continued education.

### *Resident Courses at the JAG School*

The Judge Advocate General's School offers two courses designed for enlisted soliders. The official descriptions follow, but an additional note is warranted. The Military Lawyer's Assistant Course is new and is scheduled for 21 February to 2 March 1979. This course combines material previously presented in two one-week courses which had separately presented the criminal law and legal assistance instruction. The new course covers both areas, with an emphasis on the basics of legal research and the fundamentals of drafting correspondence. The resident course will build upon prerequisite nonresident instruction, also offered by the JAG School in a new Law for Legal Clerks Correspondence Course.

The Law Office Management Course will be given from 7 to 11 August this year and from 27 to 31 August in 1979. There are slight differences in the structure of the two offerings, and the two course descriptions are given below.

The School allocates quotas for these courses to the major command training offices. Individuals who wish to attend should request space through their local training channels. Quotas cannot be obtained directly from the JAG School.

### **Military Lawyer's Assistant Course**

*Length:* 7-½ days.

*Purpose:* The course provides essential training in the law for legal clerks and civilian employees who work as professional assistants to Army judge advocate attorneys. The course is specifically designed to meet the needs of the Army legal clerk, MOS 71D, for skill level three training in paralegal duties.

*Prerequisites:* The course is open only to enlisted service members and civilian employees who are serving as paraprofessionals in a military legal office, or whose immediate future assignment entails providing professional assistance to an attorney. Students must have served a minimum of one year in a legal clerk/legal paraprofessional position and must have satisfactorily completed the Law for Legal Clerks Correspondence Course.

*Substantive Content:* The course focuses on Army legal practice, with emphasis on the client service aspects of legal assistance and criminal law. The course builds on the prerequisite foundation of field experience and correspondence course study. Coverage includes administrative procedures; legal assistance areas of family law, consumer protection, landlord-tenant and taxation; military criminal law areas of crimes and defenses, role of court personnel, jurisdiction, pretrial procedures and evidence; legal research, written communication; interviewing techniques; and professional responsibility.

### **Law Office Management Course (1978)**

*Length:* 4-½ days.

*Purpose:* To provide a working knowledge of the administrative operation of a staff judge advocate office and principles involved in managing its resources.

**Prerequisites:** Active duty or reserve component warrant officer or senior enlisted personnel in grade E-8/E-9 of an armed force.

**Substantive Content:** Office management; management of military and civilian personnel; criminal law administrative procedures; administrative law procedures, Army management system; office management of a law office, and fundamentals of management theory.

#### **Law Office Management Course (1979)**

**Length:** 4-½ days.

**Purpose:** To provide a working knowledge of the administrative operations of a staff judge advocate office and to provide basic concepts of effective law office management to military attorneys, warrant officers, and senior enlisted personnel.

**Prerequisites:** Active duty or reserve component JAGC officer, warrant officer or senior enlisted personnel in grade E-8/E-9 in any branch of the armed services. Persons who have completed this course or the Graduate Course within the *three-year period* preceding the date of this course are not eligible to attend. Officers who have been selected for Graduate Course attendance also are ineligible to attend. Security clearance required: None.

**Substantive Content:** Management theory including formal and informal organizations, motivation and communication. Law office management techniques, including effective management of military and civilian personnel and equipment, and control of budget and office actions.

#### **Resident Courses at Other Institutions**

The Personnel Administration NCO Advanced Course and the Sergeants Major Academy are the two principal advanced courses for enlisted legal personnel. Selection for attendance is by a Department of the Army board, and soldiers cannot apply directly. The list of attendees for the next NCO Advanced Course appears in this issue in the JAGC Personnel Section.

Starting with the Personnel Administration NCO Advanced Course (PANCOAC) class scheduled to report to Fort Benjamin Harrison on 7 May 1978, Phase II will be conducted by JAG School personnel at the ADMIN Center. There will be no two-week session at the JAG School in Charlottesville. The course will be six weeks long. This year's course finishes on 16 June. Five weeks will be AG instruction and one week legal clerk training.

Why so much AG and so little JAG training? The PANCOAC's purpose is to prepare selected enlisted personnel to perform duties appropriate to grade E-7 and to provide training in supervisory skills. It is not the intent of this course to teach basic material in either the administrative or the legal field. The goal is to enhance those supervisory and managerial skills needed to function effectively at the next higher grade. In the area of supervisory capability, it is imperative that legal clerks and court reporters be competitive with the entire 71 Career Management Field. MILPERCEN considers the well-rounded, whole person when selecting E-6 personnel for promotion to the next higher grade. Consequently, the course emphasizes training in leadership, organization and management, manpower management, professional military skills, personnel, and administrative services.

The course descriptions for the NCO Advanced and the Sergeants Major Courses follow:

#### **Personnel Administration NCO Advanced Course**

**Length:** 6 weeks.

**Purpose:** To prepare selected soldiers in grade E-6 to perform duties appropriate to pay grade E-7.

**Prerequisites:** Grade E-6. Additional prerequisites are announced annually by DA message.

**Application:** None. Selection made by DA board.

**Location:** Fort Benjamin Harrison, Indiana.

### U.S. Army Sergeants Major Academy

*Length:* 22 weeks.

*Scope:* Leadership resource management, military and world studies.

*Prerequisites:* Maximum service: 23 years; pay grade: E-8 (with one year in grade and not more than 5 years time in grade); Active Army; secret clearance; must have 19 months active duty remaining after completion of course.

*Application:* None. Selection made by DA board.

*Location:* Fort Bliss, Texas.

#### *Correspondence Courses Administered by the Army Correspondence Course Program*

Administration of most Army correspondence courses has been consolidated at Fort Eustis, Virginia. One centralized office now handles all of the nonresident instruction for the TRADOC schools. Courses are listed in DA Pamphlet 351-20 and in individual school catalogs. The DA pamphlet will be revised in the near future and will appear as a series of pamphlets. At the moment there is no fully up-to-date catalog of correspondence courses. Individuals interested in taking a correspondence course from a TRADOC school can write to the individual school for a catalog or can use the latest edition of DA Pamphlet 351-20, dated March 1972, with Change 10. An application for enrollment should be submitted on DA Form 145, through the unit commander, to:

Army Correspondence Course Program  
U.S. Army Training Support Center  
Newport News, Virginia 23628.

This address is used exclusively for correspondence course administration. The consolidated operation has its own ZIP code.

The school catalogs and the DA pamphlet list numerous courses in administration, management and writing which are open to most soldiers. In addition, the two main programs of interest to legal support personnel are:

### Basic Legal Clerk Correspondence Course

*Credit Hours:* 144

*Purpose and Scope:* To prepare enlisted personnel to perform effectively as legal clerks in MOS 71D20.

*Eligibility:* Enlisted members performing or preparing to perform duties as a legal clerk.

### Adjutant General NCOES Advanced (Administrative) Correspondence Course (71D/E)

*Credit Hours:* 375

*Purpose and Scope:* To provide selected enlisted personnel with a working knowledge of the duties required to perform as NCO's in the grades of E-8 and E-9. (NOTE: This course replaced the Senior Legal Clerk Course.)

*Eligibility:* NCO's of all components of the Army in the grade of E-6 or E-7.

Applications for these courses should be sent to the Army Correspondence Course Program, ATTN: 121, at the address noted above.

The Sergeants Major Academy administers a nonresident/resident version of the Sergeants Major Course, outlined earlier. Here is the full description of the course:

#### The Sergeants Major Course (Nonresident)

*Length:* 102 weeks nonresident, 2 weeks resident (at Fort Bliss, Texas).

*Prerequisites:* Active Army and reserve components as prescribed in AR 351-1, E-7 (Promotable) E-8, or E-9 with waiver, no more than 23 years service. No service obligation required upon completion. Age limit: None. Anyone selected for the resident course is ineligible for the nonresident course. Security clearance: Secret.

*Scope:* Provides instruction for selected E-8's and E-9's who have not attended the resident course of instruction on leadership, resource management, military and world studies and general subjects.

**Application:** Request is submitted by letter to MILPERCEN in the format shown in Appendix C, AR 351-1. Applicants are selected by a DA board.

*Correspondence Courses Administered by the JAG School*

The Judge Advocate General's School administers a nonresident program aimed primarily at military lawyers. Most material has been prepared for the student who is an attorney. However, enlisted legal clerks and court reporters who have sufficient field experience may enroll in selected subcourses. Descriptions of subcourses appear in the School's Annual Bulletin. Copies should be available in judge advocate offices and can be obtained by writing the School. An enlisted legal clerk or court reporter interested in taking a course should submit an application on a DA Form 145, through the unit commander to:

Commandant

The Judge Advocate General's School, U.S. Army

ATTN: Correspondence Course Office  
Charlottesville, Virginia 22901

The back of the DA Form 145 has a block for listing military education. The legal clerk or court reporter should add a few sentences describing experience and qualifications for taking the course.

The School has two courses designed for enlisted personnel. One is the Legal Administrative Technician Course and consists mainly of management and writing subcourses. The other

is a new course, Law for Legal Clerks, and is designed for the lawyer's assistant.

**Legal Administrative Technician  
Correspondence Course**

**Purpose:** To prepare Army service members to perform as legal administrative technicians, MOS 713A.

**Scope:** Personnel and office management, written communication, selected topics in military criminal and administrative law.

**Eligibility:** Warrant officer or enlisted service members in grade E-6 or above; completion of the Senior Legal Clerk Correspondence Course, NCOES Advanced (Administrative) Course, or equivalent training and experience.

**Law for Legal Clerks Correspondence Course**

**Purpose:** To provide Army legal clerks with the substantive legal knowledge for performing duties as a lawyer's assistant; to provide a foundation for resident instruction in the Military Lawyer's Assistant Course.

**Scope:** Military benefits, legal assistance programs, selected topics in administrative law, staff judge advocate functions, the military criminal law system.

**Eligibility:** Active duty enlisted legal clerks and civilian law office assistants of any grade. The application for enrollment should contain a short statement in the education history section as to the individual's duty position and qualification to take the course.

**CLE News**

**1. Field Defense Services Defense Counsel Seminars Approved for CLE Credits.** The Field Defense Services' 1978 Defense Counsel Seminars have been approved for Continuing Legal Education credit in the states of Iowa, Minnesota, and Wisconsin. A maximum of eight hours credit is authorized by Iowa and Wisconsin, while Minnesota has authorized seven hours credit. The Field Defense Services currently has a request for CLE credit pending in the state of Washington.

**2. PP&TO Funds Available for Northwestern Courses.** Northwestern University School of Law will again conduct short courses for defense lawyers and prosecuting attorneys. The Defense Lawyers course will be held from 26 June through 30 June 1978. The Prosecutors Course will be held from 31 July through 4 August 1978. Funds are available from PP&TO for tuition costs; however, the TDY must be funded by local commands. Names must be submitted to PP&TO for the Defense Course by

22 May 1978, and for the Prosecutors Course by 26 June 1978. When the names are submitted, the individual's SSAN and current assignment should also be included, along with a point of contact and telephone number.

**3. Requesting Short Course Training Through PP&TO.** A 60-day lead time is required on all requests to PP&TO for short course training. When this is not possible, individuals requesting the training must include a statement that they are willing to pay for the course, if required, subject to reimbursement. All requests for short course training must include a copy of the brochure announcing the course.

**4. TJAGSA CLE Courses.**

May 1-12: 75th Procurement Attorneys' Course (5F-F10).

May 8-11: 7th Environmental Law Course (5F-F27).

May 15-17: 2d Negotiations Course (5F-F14).

May 15-19: 8th Law of War Instructor Course (5F-F42).

May 22-June 9: 17th Military Judge Course (5F-F33).

June 12-16: 41st Senior Officer Legal Orientation Course (5F-F1).

July 24-August 4: 76th Procurement Attorneys' Course (5F-F10).

August 7-11: 8th Law Office Management Course (7A-713A).

August 7-18: 2d Military Justice II Course (5F-F31).

August 21-25: 42d Senior Officer Legal Orientation Course (5F-F1).

August 28-31: 75th Fiscal Law Course (5F-F12).

September 18-29: 77th Procurement Attorney's Course (5F-F10).

October 2-6: 9th Law of War Workshop (5F-F42).

October 10-13: Judge Advocate General's Conference and CLE Seminars.

October 16-December 15: 88th Judge Advocate Officer Basic (5-27-C20).

October 16-20: 5th Defense Trial Advocacy.

October 23-November 3: 78th Procurement Attorneys' (5F-F10).

November 6-8: 2d Criminal Law New Developments (5F-F35).

November 13-16: 8th Fiscal Law (5F-F12).

November 27-December 1: 43d Senior Officer Legal Orientation (5F-F1).

December 4-5: 2d Procurement Law Workshop (5F-F15).

December 7-9: JAG Reserve Conference and Workshop.

December 11-14: 6th Military Administrative Law Developments (5F-F25).

January 8-12: 9th Procurement Attorneys' Advanced (5F-F11).

January 8-12: 10th Law of War Workshop (5F-F42).

January 15-17: 5th Allowability of Contract Costs (5F-F13).

January 15-19: 6th Defense Trial Advocacy (5F-F34).

January 22-26: 44th Senior Officer Legal Orientation (5F-F1).

January 29-March 30: 89th Judge Advocate Officer Basic (5-27-C20).

January 29-February 2: 18th Federal Labor Relations (5F-F22).

February 5-8: 8th Environmental Law (5F-F27).

February 12-16: 5th Criminal Trial Advocacy (5F-F32).

February 21-March 2: Military Lawyer's Assistant (512-71D20/50).

March 5-16: 79th Procurement Attorneys' (5F-F10).

March 5-8: 45th Senior Officer Legal Orientation (War College) 5F-F1).

March 19-23: 11th Law of War Workshop (5F-F42).

March 26-28: 3d Government Information Practices (5F-F28).

April 2-6: 46th Senior Officer Legal Orientation (5F-F1).

April 9-12: 9th Fiscal Law (5F-F12).

April 9-12: 2d Litigation (5F-F29).

April 17-19: 3d Claims (5F-F26).

April 23-27: 9th Staff Judge Advocate Orientation (5F-F52).

April 23-May 4: 80th Procurement Attorneys' (5F-F10).

May 7-10: 6th Legal Assistance (5F-F23).

May 14-16: 3d Negotiations (5F-F14).

May 21-June 8: 18th Military Judge (5F-F33).

May 30-June 1: Legal Aspects of Terrorism.\*

June 11-15: 47th Senior Officer Legal Orientation (5F-F1).

June 18-29: JAGSO (CM Trial).

June 21-23: Military Law Institute Seminar.

July 9-13 (Proc) and July 16-20 (Int. Law): JAOGC/CGSC (Phase VI Int. Law, Procurement).

July 9-20: 2d Military Administrative Law (5F-F20).

July 16-August 3: 19th Military Judge (5F-F33).

July 23-August 3: 81st Procurement Attorneys' (5F-F10).

July 30-August 3: NCOES Advanced Course (Phase II) (Ft. Benjamin Harrison) (71D50).

August 6-October 5: 90th Judge Advocate Officer Basic (5-27-C20).

August 13-17: 48th Senior Officer Legal Orientation (5F-F1).

August 20-May 24, 1980: 28th Judge Advocate Officer Graduate (5-27-C22).

August 27-21: 9th Law Office Management (7A-713A).

September 17-21: 12th Law of War Workshop (5F-F42).

September 24-28: 49th Senior Officer Legal Orientation (5F-F1).

\*Tentative.

**5. TJAGSA Course Prerequisites and Substantive Content.** A complete list of TJAGSA Course Prerequisites and Substantive Content is published in the March 1978 issue of *The Army Lawyer* as item eight in the "CLE News" section.

## 6. Civilian Sponsored CLE Courses.

### MAY

1-2: Federal Publications, Terminations of Government Contracts, Las Vegas, NV. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

1-2: PLI, Occupational Safety and Health Law, Stanford Court Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175. Course Handbook only: \$20.

1-3: George Washington Univ., Patents and Technical Data [government procurement treatment of patents and technical data in the purchase of supplies and services], George Washington Univ. Library, 2130 H St. NW, Rm.

729, Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone: (202) 676-6815. Cost: \$400.

1-5: LEI, Administrative Law Judges and the Regulatory Process Seminar, Williamsburg, VA. Contact: Legal Education Institute - TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

3-5: Federal Publications, Construction Contract Litigation, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

3-6: American College of Legal Medicine, Annual Conference, Stanford Court Hotel, San Francisco, CA. Contact: Betty Hanna, Executive Secretary, American College of Legal Medicine, 1340 N. Astor St., Suite 2608, Chicago, IL 60610.

4-6: ALI-ABA, Energy and the Law: Problems and Challenges of the Late 70's, Denver, CO. Contact: Donald M. Maclay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

7-12: NCSJ, Civil Litigation—Graduate. Contact: National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone: (702) 784-6747. Cost: \$355.

8-9: Federal Publications, Negotiating Collective Bargaining Agreements, Williamsburg, VA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

8-10: George Washington Univ.—Federal Publications, Equal Employment Claims & Litigation, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

8-10: Federal Publications, Small Purchasing, Seattle, WA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

8-11: Federal Publications, Fundamentals of Government Contracting, Berkeley, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$525.

9-11: LEI, Trial Practice Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

11-12: PLI, Law Office Management [in firms of 25-100

attorneys], Americana Hotel, New York, NY. Contact: Nancy B. Hinman, Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

11-12: Federal Publications, Procurement for Secretaries, Seattle, WA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

12-13: ALI-ABA, Construction Contracting in the Middle East: Problems and Solutions, Washington, DC. Contact: Donald M. MacLay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

14-19: NCSJ, Criminal Evidence—Graduate. Contact: National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone: (702) 784-6747. Cost: \$355.

15-17: Federal Publications, Practical Labor Law, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

16-18: LEI, Environmental Law Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

16-19: ALI, Annual Meeting, The Mayflower Hotel, Washington, DC. Contact: American Law Institute, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

17-19: C.M.A., 3d Annual Homer Ferguson Conference on Appellate Advocacy, Georgetown Law Center, Washington, DC. Contact: Robert C. Mueller, U.S. Court of Military Appeals, Washington, DC 20442. Phone: (202) 693-7100, AUTOVON 223-7100. Cost: \$15.

20-27: CPI, Trial Advocacy Seminar, Ramada O'Hara Inn, Chicago, IL. Contact: Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone: (312) 725-0166. Cost: \$700.

21-26: NCDA, Prosecutor's Office Administrator Course, Part I, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: (713) 749-1571.

22-23: Federal Publications, Terminations of Government Contracts, San Francisco, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

22-24: Federal Publications, Procurement for Lawyers, Washington, DC. Contact: Miss J. K. Van

Wycks, Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

22-26: International Association of Forensic Sciences, Meeting, Wichita, KS. Contact: President, International Association of Forensic Sciences, P.O. Box 8282, Wichita, KA 67208.

25-26: FBA, Openness in Government IV, Mayflower Hotel, Washington, DC. Contact: Conference Secretary, Federal Bar Association, Suite 420, 1815 H St. NW, Washington, DC 20006. Phone: (202) 638-0252.

25-26: Federal Publications, Legal Malpractice, Houston, TX. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

25-27: ABA National Institute, Trial of an Employment Discrimination Case, San Diego, CA. Contact: ABA National Institutes, American Bar Association, 1155 E. 60th St., Chicago, IL 60637. Cost: \$180-\$250.

28-9 June: NCCDLDP, Trial Practice Institutes, Houston, TX. Contact: Registrar, National College of Criminal Defense Lawyers and Public Defenders, College of Law, Univ. of Houston, 4800 Calhoun, Houston, TX 77004. Phone: (713) 749-2283. Cost: \$375.

## JUNE

5-7: Federal Publications, Small Purchasing, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St., NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

6-8: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute—TOG U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3843.

7-9: Federal Publications, Changes in Government Contracts, Los Angeles, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

7-9: Federal Publications, Contracting for Services, Las Vegas, NV. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

8-9: Federal Publications, Procurement for Secretaries, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

11-16: ALI-ABA—Villanova Univ. School of Law, Federal Rules of Evidence: A Clinical Study of Recent Developments, Villanova, PA. Contact: Donald M. MacLay, Director, Courses of Study, ALI-ABA Committee on

Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104. Phone: (215) 387-3000.

11-23: NCSJ, the Judge and the Trial—Graduate. Contact: National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone: (702) 784-6747. Cost: \$545.

11-7 July: NCSJ, General Jurisdiction—First Summer—General. Contact: National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone: (702) 784-6747. Cost: \$945.

12-23: NCDA, Executive Prosecutor Course, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: (713) 749-1571.

14-16: LEI, Institute for New Government Attorneys, Kings Point, NY. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

18-30: NCCDLPD, Trial Practice Institutes, Houston, TX. Contact: Registrar, National College of Criminal Defense Lawyers and Public Defenders, College of Law, Univ. of Houston, 4800 Calhoun, Houston, TX 77004. Phone: (713) 749-2283. Cost: \$375.

19-20: PLI, Occupational Safety and Health Law. Hyatt Regency Hotel, Atlanta, GA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175. Course Handbook Only: \$20.

19-21: George Washington Univ.—Federal Publications, Cost Accounting Standards, Vail, CO. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

19-21: Federal Publications, Changes in Government Contracts, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

20-21: IPLT, Evidence and Trial Preparation, New York, NY. Contact: Kathryn Mann, The Institute for Paralegal Training, 235 S. 17th St., Philadelphia, PA. Phone: (215) 732-6999. Cost: \$225.

25-7 July: NCSJ, Sentencing/Criminal Law—Graduate. Contact: National College of the State Judiciary, Judicial College Bldg., Univ. of Nevada, Reno, NV 89557. Phone: (702) 784-6747. Cost: \$545.

26-30: Northwestern Univ., 21st Annual Short Course for Defense Lawyers in Criminal Cases, Chicago, IL. Contact: Miss Marie D. Christiansen, Administrator, Northwestern Univ. School of Law, 357 E. Chicago Ave., Chicago, IL 60611. Phone: (312) 649-8467. Cost: \$250.

26-30: George Washington Univ.—Federal Publications, The Practice of Equal Employment, San Diego, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$575.

## Reserve Affairs Section

### *Reserve Affairs Department, TJAGSA*

**1. JAG School Discontinues Pay Processing for JA Reserve Unit Personnel.** Effective 1 April 1978 the Adjutant's Office at The Judge Advocate General's School will no longer handle processing for pay (base pay and allowances, travel and per diem) for JAG reserve or National Guard unit personnel attending short courses at The Judge Advocate General's School. Processing for pay by the Adjutant's Office will, however, continue for Judge Advocate General's Corps reserve officers assigned to RCPAC. Pay processing for unit personnel should be accomplished through the officer's unit of assignment. The unit can then send the completed pay forms to Finance and Accounts Office, Building 5216, Fort Lee, Virginia 23801 for payment or submit the forms through their nearest finance center.

**2. AT 78 — Enlisted MOS Training.** During the period 10-21 July 1978 officer personnel of JAGSO Court-Martial Defense Teams will perform AT at The Judge Advocate General's School, Charlottesville, Virginia. However, since neither personnel nor equipment to conduct meaningful training for enlisted personnel of these detachments are available at the JAG School, the enlisted personnel of these detachments, consisting of one Court Reporter, E-6, and one Legal Clerk, E-6, per team should report to the U.S. Army Institute of Administration, Fort Benjamin Harrison, Indiana, for a two-week period in accordance with the schedule below.

Enlisted attorneys who have requested or are planning to request appointment in the

Judge Advocate General's Corps will be permitted to attend training at the JAG School with their unit.

Military Law Centers are authorized and encouraged to further coordinate the scheduling of this training with CW2 Larry Turner or Sergeant Thorn at the U.S. Army Institute of Administration, (317) 542-3500.

Enlisted personnel in the Sixth U.S. Army area will be performing AT at Camp Park, California, and accordingly are exempt from this requirement.

### RECOMMENDED SCHEDULE OF TRAINING FOR COURT-MARTIAL DEFENSE TEAM COURT REPORTERS AND LEGAL CLERKS AT 1978

#### FIRST U. S. ARMY

45th	(3rd)	1-12 May
62d	(4th)	1-12 May
63d	(4th)	1-12 May
64th	(4th)	1-12 May

142d	(42d)	15-26 May
149th	(10th)	15-26 May
193d	(11th)	15-26 May
171st	(11th)	15-26
177th	(213th)	5-16 June
190th	(12th)	5-16 June
157th	(153d)	5-16 June
202d	(213th)	5-16 June
204th	(12th)	5-16 June

#### FIFTH U. S. ARMY

128th	(214th)	19-30 June
15th	(1st)	19-30 June
18th	(1st)	19-30 June
17th	(1st)	19-30 June
34th	(2d)	3-14 July
27th	(2d)	3-14 July
129th	(8th)	3-14 July
143d	(9th)	3-14 July
96th	(7th)	17-28 July
141st	(9th)	17-28 July
95th	(7th)	17-28 July
101st	(7th)	17-28 July

## JAG Reserve Officers Encouraged To Participate in Mutual Support Training

*Reserve Affairs Department, TJAGSA*

In order to maintain the mission readiness of reserve component Judge Advocate General's Corps officers and JAG reserve units it is essential that adequate training programs be initiated. One way to accomplish training requirements is through a mutual support program. A working relationship with active army judge advocates not only improves technical proficiency but also enhances the Total Force concept through the sharing of experiences and facilities.

The mutual support program is designed to provide on-the-job training for judge advocate reserve officers in the area of their mission expertise or a related second assignment area. The program is designed to place reserve component Judge Advocate General's Corps officers at installations near their detachment loca-

tion and to increase their incentive for training and expertise by providing an involvement with actual military legal problems associated with installations. The secondary purpose of the program is to provide needed assistance to the installation staff judge advocate in the accomplishment of his or her mission of providing total legal service to the military community.

Mutual support training is governed by AR 11-22 and should be used as a guide by reserve component judge advocates interested in this type of training. The ultimate aim of the program is to effect comprehensive mutual support by fostering imaginative new concepts of association between the active and reserve components of the Army within available resources whenever and wherever practicable. The Director, Reserve Affairs Department, The

Judge Advocate General's School, encourages all USAR judge advocate officers to be involved with mutual support training.

On 3 December 1977 the 7th JAG Military Law Center, Chicago, Illinois, and SJA Office, Fort Sheridan, Illinois, co-hosted the Third Annual JAG Mutual Support Conference at the Great Lakes Naval Training Center. Among

topics discussed was a history of the 7th JAG's Mutual Support Program at Fort Sheridan and how it evolved from periodic Saturday legal assistance to full-fledged legal service to an active military installation on a year round basis. The entire conference was video taped by FORSCOM and the tape will be available to all USAR JAG units in the near future.

### **Army Field Law Library Service Moves to Charlottesville**

*Developments, Doctrine and Literature  
Department, TJAGSA*

On 1 April 1978 The Judge Advocate General's School (TJAGSA) assumed the mission of administering the Army Law Library Service (ALLS). The ALLS will be under the Director, Developments, Doctrine and Literature Department, TJAGSA.

TJAGSA is currently revising Army Regulation 1-115, Administration, Army Field Law Library Service, in order to reflect the operating changes that TJAGSA intends to implement in the administration of the ALLS. *The Army Lawyer* will be used to communicate the latest information about ALLS operations.

Because TJAGSA will not operate a repository for excess library materials, do not forward excess books to the ALLS; instead report those books to ALLS and the ALLS will issue disposition instructions for all excess materials that are not obsolete; for obsolete library materials; normal property disposal channels should be used. It is anticipated that *The Army Lawyer* will be utilized as necessary to make ALLS announcements including the listing of excess li-

brary materials available. Libraries interested in obtaining publications on the excess list should submit their requests with appropriate justification to the ALLS. Some libraries have already indicated that they have excess sets of CMRs on hand; hence, libraries requiring additional CMRs should request such. Please state in your request the number of sets of CMRs you presently have.

In order to make ALLS more efficient and responsive to your needs, TJAGSA is in the process of automating the ALLS. Your cooperation in responding to the information requests that TJAGSA will be forwarding to each library account in the near future will greatly assist this effort.

All correspondence concerning the ALLS should be sent to: Commandant, The Judge Advocate General's School, ATTN: JAGS-DDS, Charlottesville, Virginia 22901. The ALLS may be contacted by calling AUTOVON 274-7110 and asking for extension 293-4382. The FTS telephone number is 937-1208.

### **Professional Responsibility Complaint Procedures**

The Judge Advocate General has established procedures for disposing of alleged violations of the Codes of Professional Responsibility and Judicial Conduct of the American Bar Association, as well as procedures for processing requests for advisory opinions. These procedures, which still are evolving, will in time be incorpo-

rated in appropriate Army regulations in the 27 series. Pending the regulatory changes, the procedures are as follows:

Matters pertaining to violations of the codes, which include the canons, ethical considerations, and disciplinary rules, are coordi-

nated by the Executive to The Judge Advocate General. All complaints, inquiries, or correspondence, regardless of subject matter, should be directed to the Executive.

No investigation of alleged professional responsibility derelictions may be conducted at any level without the approval of The Judge Advocate General (see DAJA Message 011530Z Sep 76 and DAIG Message 271454Z Feb 78). To the extent possible, controverted facts in a complaint or allegation are reduced to found facts, if necessary by an investigating officer UP AR 15-6 appointed or authorized by The Judge Advocate General.

Once the facts have been determined, they are reviewed by a JAGC general officer other than The Judge Advocate General to determine whether there is probable cause to believe that a professional responsibility violation occurred. If no probable cause is found the matter does not proceed further. The probable cause determination normally is made by the general officer having technical supervisory authority over the lawyer complained against, *e.g.*, The Assistant Judge Advocate General for Military Law for prosecutors and legal assistance officers, the Assistant Judge Advocate General for Civil Law for defense counsel and general litigation attorneys, or the Chief, U.S. Army Judiciary, for military judges.

If probable cause is found, the file goes to the Executive who, in turn, forwards a factual synopsis and all relevant documents to The Judge Advocate General for a decision on whether the matter should be sent to The Judge Advocate General's Professional Responsibility Advisory Committee (formerly known as The Judge Advocate General's Professional Ethics Committee) for opinion. If The Judge Advocate General decides not to refer the matter to the Committee, he may terminate the action at that point or he may refer it to the command, SJA, or equivalent lawyer-supervisor, for appropriate action.

If The Judge Advocate General does refer the matter to the Committee, the Executive first sends a complete copy of the file to the respondent-lawyer. The lawyer is informed

that The Judge Advocate General has referred the case to the Committee and that he or she may forward, within a reasonable time, any relevant matters for consideration by the Committee.

When the respondent replies, to include whatever matters he or she wants considered, the entire file is forwarded to the Committee with a respect for an opinion and recommendations.

The Committee is composed of four military lawyers of various grades. A quorum is three members. Senior lawyers will be appointed where necessary to insure that all members are senior to the respondent. If a judge is the respondent and has allegedly violated one of the canons of the ABA Code of Judicial Conduct, the Committee will be composed of judges only.

Committee members read each case file and then meet to discuss the case. The chairman assigns a member the responsibility of preparing a draft opinion. A majority of the members must agree to an opinion and written dissents may be attached to the majority opinion.

The Committee is advisory only and has no investigative powers. Because of this, there is no right for the respondent or his or her counsel, if any, to appear personally. The committee will not respond to any attempts to communicate directly with it, and will refer any such attempts to the Executive. If the Committee believes it has insufficient information on which to arrive at an opinion, it so reports and further investigation may be directed or the case may be withdrawn by The Judge Advocate General. In either event, the respondent receives written notification from the Executive.

Final opinions of the Committee are returned to the Executive. If there is not a finding of a violation, the respondent is so notified and the case is closed. If a violation is found, a copy of the Committee's opinion is sent to the respondent before it is referred to The Judge Advocate General for action. The respondent is informed that he or she may submit, within a reasonable time, anything for The Judge Advocate General's consideration in taking action on the opinion.

Upon receipt of any matters submitted by the respondent or notice that no further matters will be submitted, the entire file is reviewed by The Judge Advocate General, who takes final action on the opinion.

Possible sanctions that may be imposed by

The Judge Advocate General as a result of his approval of a finding of an ethical violation include a direction for oral counseling by supervising lawyers; admonition; written reprimands, which may be filed in personnel files; action to decertify; and reference to the state bar of admission for disciplinary action.

## **Criminal Law Section**

### *Criminal Law Division, OTJAG*

#### **Counsel Advice Concerning Suspension and Vacation Procedures Under Article 15, U.C.M.J.**

Although there is no regulatory requirement to do so, counsel who initially advise service members who have been offered punishment under Article 15, U.C.M.J., should include an explanation of suspension of punishment and vacation procedures applicable under Article 15, because these are possible consequences of a decision not to demand trial. Although under

paragraph 134, MCM, 1969 (Rev. ed.), a probationer should ordinarily be given an opportunity to appear before the commander authorized to vacate suspension of punishment to rebut any information upon which the proposed vacation is based, the member should be informed that no formal hearing or statement of reasons is required if the commander decides to vacate a suspended punishment; the procedure differs from that following conviction by court-martial.

## **Judiciary Notes**

### *U. S. Army Judiciary*

**1. MOBDES Vacancies.** As of 15 March 1978, there is one MOBDES vacancy on the C.M.R., five in the Trial Judiciary, one in the Examination and New Trials Division, and one in the Contract Appeals Division. Reserve personnel who are interested in becoming, and who believe they qualify as, MOBDES to fill one of these positions for assignment in USALSA may apply by submitting three copies of completed DA Form 2976 (Application for Mobilization Designation Assignment) to their immediate commander. Instructions and procedures are

found in para 3-6, AR 140-145, dated 24 June 1977.

**2. Note From the Defense Appellate Division.** In addition to copies of initial pleadings filed by the Defense Appellate Division before the A.C.M.R. which are furnished to the convening authority, copies will also be furnished to the trial defense counsel by mail. The pleadings, which will be marked "DEFENSE COUNSEL," will be sent to the SJA office of the jurisdiction where the accused was convicted.

## **Legal Assistance Items**

*Major F. John Wagner, Jr., and Major Steven F. Lancaster, Administrative and Civil Law Division, TJAGSA*

### **1. ITEMS OF INTEREST**

#### **Administration—Preventive Law Program.**

The Federal Trade Commission has recently published two Spanish language consumer

pamphlets, *Garantias* (Warranties) and *Ley de Igualdad de Oportunidad en el Crédito* (Equal Credit Opportunity Act).

The *Garantias* pamphlet describes the different types of warranties offered, how to use warranties for comparison shopping and what to do about a problem with a product under warranty. The *Ley de Igualdad de Oportunidad en el Crédito* pamphlet explains a consumer's right to have his or her application for credit considered without discrimination based on national origin, race, sex, marital status, religion, age or receipt of public assistance income.

Single copies of these pamphlets in Spanish and English are available free by writing Consumer Information Center, Pueblo, Colorado 81009. Multiple copies may be obtained by writing to the Federal Trade Commission, Distribution and Duplication Branch, Room 128, Washington, D.C. 20580 or any of the Commission's Regional Offices.

[Ref: Ch. 2, DA PAM 27-12.]

**Commercial Affairs—Commercial Practice And Control—Federal Statutory And Regulatory Consumers Protections—Fair Debt Collection Practices Act.** The Fair Debt Collection Practices Act, Pub. L. No. 95-109, 91 Stat. 874 codified at 15 U.S.C. § 1692 (1977), designed to prohibit abusive, deceptive and unfair debt collection practices by debt collectors, became effective 20 March 1978.

The purpose of the new law, which will be enforced primarily by the Federal Trade Commission, is to insure that people are treated fairly by debt collectors. Debts covered are personal, family and household debts like those for purchase of a car, for medical care, or for charge accounts.

Major consumer rights under the new law include the right to receive written notice within five days after being contacted by a debt collector. The notice must state the amount of money owed and the name of the creditor, and must

give instructions on what can be done if the consumer believes the money is not owed.

The law also gives the consumer the right to sue a debt collector in a state or federal court within one year from the date the law was violated and to recover money for damage suffered, including court costs and attorney's fees.

The law does not cancel a consumer's legitimate debts. However, it prohibits debt collectors from using unjust means to collect a debt. Under the new law, a debt collector may not:

*Harass, Oppress or Abuse Any Person.*

Such acts would include using threats of violence; publishing lists that claim consumers refused to pay; using obscene or profane language; advertising debts; repeatedly contacting the same person; telephoning without identifying the caller; contacting a consumer at inconvenient or unusual times or places, or at work if an employer disapproves.

*Make False Statements When Collecting a Debt.*

These would include falsely implying that the debt collector represents the federal, state, or local government; that the debt collector is an attorney; that the debtor committed any crime; that the debt collector operates or works for a credit bureau; misrepresenting the amount of the debt; or misrepresenting the nature of legal or non-legal papers.

Also, a debt collector may not say that a consumer will be arrested or imprisoned if the debt is not paid; that a consumer's property or wages will be garnished; unless the collector or the creditor intends to do so and it is legal; or that any action will be taken which cannot legally be taken.

A debt collector may not give out false credit information; send a debtor anything that might be mistaken for an official document of a federal, state or local government; or use any false name.

*Use Unfair Methods in Attempting to Collect a Debt.*

For example, the debt collector may not col-

lect an amount greater than the amount of the debt, unless allowed by law; deposit any post-dated check before the date on that check; make the consumer accept collect calls or pay for telegrams; take or threaten to take property without the right to do so; contact a consumer by post card; or put anything on an envelope that identifies the writer as a debt collector.

Persons who believe they have been victimized by unfair debt collection practices should contact the proper federal enforcement agency. They may also wish to check with their State Attorney General's office or local consumer protection officials to determine their rights under state and local laws.

For more information, and for a new brochure that describes consumer rights under the new law and lists agencies charged with enforcement, write Federal Trade Commission, DEBT COLLECTION PRACTICES, Washington, D.C. 20580.

[Ref: Ch. 10, DA PAM 27-10.]

**Decedent's Estates And Survivor's Benefits—Survivor's Benefits—Dependency And Indemnity Compensation.** Public Law 95-117, "Veterans Disability Compensation and Survivor Benefits Act of 1977," which became effective 1 October 1977, amends Title 38 of the United States Code by increasing the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for their survivors. The following is a table taken from the Act which sets out the new dependency and indemnity compensation rates for surviving spouse:

<i>Pay Grade</i>	<i>Monthly Rate</i>	<i>Pay Grade</i>	<i>Monthly Rate</i>
E-1	\$277	W-4	\$397
E-2	\$286	0-1	\$350
E-3	\$293	0-2	\$362
E-4	\$311	0-3	\$388
E-5	\$320	0-4	\$409
E-6	\$327	0-5	\$451
E-7	\$343	0-6	\$507
E-8	\$362	0-7	\$550
E-9	\$378	0-8	\$602
W-1	\$350	0-9	\$647

<i>Pay Grade</i>	<i>Monthly Rate</i>	<i>Pay Grade</i>	<i>Monthly Rate</i>
W-2	\$364	0-10	\$708
W-3	\$375		

[Ref: Ch. 16, DA PAM 27-12.]

**Family Law—Adoption.** Ardell William Walcott is the mother of Darrell (Webster Quiloin), an illegitimate child born in December 1964. The putative father is Leon Webster Quiloin. In September 1967 Ardell married Randall Walcott. In March 1976 Ardell consented to the adoption of Darrell by Randall, who immediately filed a petition for adoption. In response to Randall's petition, Leon filed an application for writ of habeas corpus seeking visitation rights, a petition for legitimation, an objection to the adoption, and a claim that Ga. Code Ann. §§ 74-203 and 74-403 were unconstitutional as applied, insofar as they denied him the rights granted to married parents (equal protection) and presumed unwed fathers to be unfit as a matter of law (due process). The trial court heard all the issues raised by Leon to allow "the biological father . . . a right to be heard with respect to any issue or other thing upon which he desire(s) to be heard, including his fitness as a parent . . . ." The trial court concluded the adoption to be in Darrell's best interests and that granting either legitimation or visitation would not be in Darrell's best interests. The court found that, since Leon had no legitimation order, he had no standing to objection to the adoption. Ruling that Leon's constitutional claims were without merit, the court granted Randall's adoption petition and denied Leon's legitimation and visitation petitions. The Georgia Supreme Court affirmed the trial court's decision and Leon appealed to the U.S. Supreme Court.

The United States Supreme Court unanimously held that §§ 74-203 and 74-403(3), applied in the case, did not deprive appellant of his asserted rights under the Due Process and Equal Protection Clauses.

Leon was afforded a full hearing on his legitimation petition and was denied his petition, not as a result of a finding that he was unfit but because legitimation was not in "the best interest of the child." Since Leon con-

tended he was entitled to recognition and preservation of his parental rights absent a showing of his "unfitness", the issue was examined from both Due Process and Equal Protection perspectives.

**Due Process.** The relationship between parent and child is constitutionally protected. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 231-233 (1972); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923). "Custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply or hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). "Freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. La Fleur*, 414 U.S. 632, 639-640 (1974). Due Process would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." *Smith v. Organization of Foster Families for Equality and Reform*, \_\_\_ U.S. \_\_\_\_ (1977) (Stewart, J., concurring). But this is not a case where the unwed father had sought custody of his child; nor where the proposed adoption would place the child with a set of parents with whom the child had never lived. The result here was desirable for all but Leon: to give full recognition to an already-existing family unit. Therefore, the State, *in this situation* (emphasis supplied), was not required to find anything more than that the adoption, and denial of appellant's legitimation petition, was in the "best interests of the child."

**Equal Protection.** Leon's interests are readily distinguishable from those of a father with a legitimate child, therefore the State can then give him less veto authority than it provides to such a father. In this case Leon was for years subject to essentially the same child support obligation as a married father would have had, he never exercised actual or legal custody over his child, and thus never shouldered any of his

responsibility to supervise, educate, protect or care for the child. He never complained of his exemption from these responsibilities, nor does he now seek custody. Legal custody is a central aspect of marriage, and even a divorced or separated father will have borne full responsibility for child rearing during the marriage. The State was not foreclosed from recognizing this difference in the extent of commitment to the welfare of the child.

The decision of the Georgia Supreme Court was affirmed. *Quilloin v. Walcott*, \_\_\_ U.S. \_\_\_\_ (1978); [1977] 4 FAM. L. REP. (BNA) 3023.

[Ref: Ch. 21, DA PAM 27-12.]

**Family Law—Support Of Dependents—Judicial Enforcement Of Support Obligations.** One of the legal assistance items which appeared in the February 1978 issue of *The Army Lawyer* concerned the case of Ralph and Frances Overman. However, the style and citation to the case was inadvertently omitted. The case is *Overman v. United States*, 563 F.2d 1287 (8th Cir. 1977).

[Ref: Ch. 26, DA PAM 27-12.]

**Taxation—State And Local Income Tax—Minnesota.** During the 1977 legislative session the Minnesota legislature passed several amendments to the Minnesota Income Tax Law. Specifically related to military personnel was the repeal of Minn. Stats. 290.01, subd. 20(b)(8) and 290.65, subd. 1 which provided exclusions from income for state income tax for military personnel who were residents of Minnesota. For tax years beginning after 31 December 1977, military income of service members who are residents of Minnesota will be fully taxable in Minnesota.

[Ref: Ch. 43, DA PAM 27-12.]

## 2. ARTICLES AND PUBLICATIONS OF INTEREST.

### Decedent's Estates And Survivor's Benefits—Estate Planning.

Collins, *Basis of Property Transferred at*

Death Under the Tax Reform Act of 1976, 28 MERCER L. REV. 917 (1977).

Hightower, *Carryover Basis Rules for Inherited Property*, 5 FLA. ST. U.L. REV. 155 (1977).

Ingram, *Uniform Probate Code and the Federal Estate Tax Marital Deduction*, 1976 UTAH L. REV. 819 (1976).

Kabaker, *Structuring Marital Deduction Formula Clauses Under the Tax Reform*

Act of 1976, 13 WAKE FOREST L. REV. 559 (1977).

Klingmann and Milefsky, '76 Act's *Carryover-Basis Rules: New Vistas for Tax Planning*, 8 TAX ADVISOR 388 (July 1977).

Will, *Irrevocable Life Insurance Trusts in the Estate Plan After the Tax Reform Act of 1976*, 12 TULSA L.J. 201 (1976).

[Ref: Ch. 13, DA PAM 27-12.]

## JAGC Personnel Section

### PP&TO, OTJAG

1. **PP&TO Funds Available for Northwestern Courses.** PP&TO funds are available for tuition costs at the Northwestern University School of Law's short courses for defense lawyers and prosecuting attorneys. Details are printed at item two in the "CLE News" section in this issue of *The Army Lawyer*.

2. **Requesting Short Course Training.** Details on requesting short course training through PP&TO are printed at item three in the "CLE News" section in this issue.

### 3. Assignments.

#### COLONELS

NAME	FROM	TO	APPROX DATE
BRIGHT, Fred, Jr.	USALSA w/d Hawaii	USALSA w/d Ft Campbell, KY	June 78
CULPEPPER, Vernon M.	21st Sup. Cmd APO 09325	Fifth US Army Ft Sam Houston, TX	Jul 78
DORSEY, Frank J.	Claims Svc, Ft Meade, MD	First US Army Ft Meade, MD	May 78
GLASGOW, Richard J.	First US Army Ft Meade, MD	USA Elm, So Cmd APO NY 09826	Jun 78
HAMMACK, Ralph B.	USALSA w/d Yongsan, Korea	USALA w/d Ft Knox, KY	Jul 78
HANSEN, Donald W.	USATC Ft Dix, NJ	War Col, Carlisle Bks PA (student)	Aug 78
HOLDAWAY, Ronald M.	Stu ICAF Ft McNair	VII Corps APO 09107	Jul 78
MARDEN, Jack M.	USAG Ft Meade, MD	USALSA w/d Ft Dix, NJ	June 78
McNAMEE, Alfred A.	AFSOUTH 09524	USALSA	Mar 78
MOUNTS, James A.	USALSA	Claims Svc Ft Meade, MD	Jun 78
MOVSESIAN, Anthony A.	White Sands Missile Range, NM	USA Forces Readiness Cmd, MacDill AFB	Aug 78
NOBLE, James E.	VII Corps APO 09107	USALSA w/d Ft Ord, CA	Jun 78
OVERHOLT, Hugh R.	XVIII ABN Corps Ft Bragg, NC	OSD WASHDC	Jul 78
SPENCER, Bryan S.	IGA WASHDC	AFSOUTH APO 09524	Jun 78

#### LIEUTENANT COLONELS

BADAMI, James A.	OSD WASHDC	HQ USAREUR APO 09403	Jun 78
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NAME	FROM	TO	APPROX DATE
BATEMAN, Robert E.	OTJAG	Computer Sys Cmd Ft Belvoir, VA	Jul 78
BROWN, Terry W.	Stu War Col Carlisle Bks, PA	XVIII ABN Corps Ft Bragg, NC	Jul 78
DAHLINGER, Richard K.	HQ USAREUR APO 09408	8th US Army APO 96301	Jul 78
DOWNES, Michael M.	Stu War Col	IGA WASHDC	Jul 78
ECKHARDT, William G.	Stu C&GSC	3d Armd Div APO 09039	Jun 78
ENDICOTT, James A., Jr.	III Corps Ft Hood, TX	2d Armd Div Ft Hood, TX	Jun 78
FLEMMING, Herbert M.	HQ EA MTMC Bayonne	USAG White Sands Missile Range, NM	Aug 78
FORYS, Conrad W.	21st Sup Cmd APO 09325	HQ EA MTMC Bayonne	Aug 78
FUGH, John L.	3d Armd Div APO 09039	War Col (St u)	Aug 78
GARN, George J.	USALSA w/d Frankfurt Germany	First US Army Ft Meade, MD	Jul 78
GIDEON, Wendell R.	Stu C&GSC	OTJAG	Jun 78
GILLIGAN, Francis A.	Stu C&GSC	USALSA w/d Frankfurt	Jun 78
GREEN, Fred K.	TJAGSA	Stu C&GSC	Aug 78
HANDCOX, Robert C.	Stu C&GSC	Avn Ctr Ft Rucker, AL	Jun 78
HUG, Jack P.	1st Inf Div APO 09137	USALSA w/d Seoul Korea	Jul 78
LAPLANT, Earl M.	USALSA w/d Ft Hood TX	21st Sup Cmd APO 09325	Jun 78
LEWIS, Jerome X.	2d Armd Div Ft Hood TX	USALSA	Jul 78
McCOLL, Archibald M.S.	Admin Ctr Ft Ben Harrison, IN	MTMC Oakland, CA	Jun 78
McCUNE, James N.	8th US Army APO 96301	MTMC WASHDC	Aug 78
MITTELSTAEDT, Robert	VII Corps APO 09107	Claims Svc Ft Meade MD	Aug 78
MURRAY, Robert E.	OTJAG	1st ARmd Div APO 09326	Jun 78
MYERS, Walter K.	OTJAG	Korea	Jun 78
NAUGHTON, John F.	USALSA w/d Bad Kreuznach, Germany	C&GSC	Aug 78
RADOSH, Burnett H.	Armed Servs Bd of Contract Appeals Alex., VA	USATC Ft Dix, NJ	Jul 78
RICE, Leonard E.	8th US Army APO 96301	MDW WASHDC	Jul 78
WATSON, Kermith G.	19th Sup Cmd APO 96212	USAG Ft Meade, MD	Jun 78
WILSON, Norman S.	USALSA w/d Ft Leonard Wood, MO	USALSA w/d Ft Leavenworth, KS	Jul 78
WOODWARD, Joe L.	2d Inf Div APO 96224	USALSA w/d Ft Hood, TX	Jul 78
WOSEPKA, James L.	USAG Okinawa	Admin Ctr Ft Ben Harrison, IN	Jun 78
MAJORS			
BOGAN, Robert	19th Sup. Cmd APO 96212	USAG Okinawi APO 94781	Jun 78
BONNEY, Charles E.	OTJAG	2d Armd Div Ft Hood, TX	Jul 78

NAME	FROM	TO	APPROX DATE
BOZEMAN, John R.	USALSA	Stu C&GSC	Aug 78
BROOKSHIRE, Robert R.	MP Sch Ft McClellan	VII Corps APO	Jul 78
	AL	09107	
CORRIGAN, Dennis M.	Stu C&GSC	1st Inf Div APO	Jun 78
CREAN, Thomas M.	1st Armd Div APO	Stu C&GSC	Aug 78
	09326		
CRUDEN, John C.	USALSA Eur APO	OTJAG	Jun 78
	09403		
CUNDICK, Ronald P.	Stu C&GSC	OTJAG	Jun 78
DARLEY, Robert G.	USALSA w/d Frankfurt	USAG Ft Sam	Aug 78
	Germany	Houston TX	
DAVIS, Ronald W.	FORSCOM	III Corps Ft Hood, TX	Jun 78
DELIN, Donald A.	OCLL, WASHDC	101st ABN Div Ft	Jun 78
		Campbell, KY	
DEMETZ, Robert A.	8th Inf Div APO	OTJAG	Jun 78
	09111		
DEVINE, Frank E.	MDW WASHDC	Korea	Jun 78
DORT, Dean R.	Korea	OCLL WASHDC	Jul 78
FRANKEL, Ronald S.	Ofc of Cdr, Berlin	OTJAG	Jun 78
GENTRY, William O.	USALSA w/d Ft Campbell	Stu C&GSC	Aug 78
	KY		
GLEASON, James C.	OTJAG	Stu AFSC Norfolk, VA	Aug 78
GRAY, Kenneth D.	TJAGSA	1st ARmd Div APO	Jun 78
		09326	
HAESSIG, Arthur G.	Stu C&GSC	OTJAG	Jun 78
LANE, Jack F.	101st ABN Div Ft	Stu C&GSC	Aug 78
	Campbell, KY		
LINEBARGER, James L.	OTJAG	HQ USAREUR APO	Jul 78
		09403	
MAGERS, Malcolm S.	2d Inf Div APO	Stu C&GSC	Aug 78
	96224		
McNEILL, David, Jr.	Air Def Ctr Ft Bliss	USALSA	Jun 78
	TX		
ROBBLEE, Paul A.	USMA	82d ABN Div Ft	Jun 78
		Bragg, NC	
RUSSELL, Richard D.	2d Armd Div Ft	USALSA w/d	Jun 78
	Hood, TX	Baumholder	
SCHNEIDER, Loyson E.	2d Inf Div APO	Combat Development	Oct 78
	96224	Experimental Cmd Ft	
		Ord, CA	
STEINBERG, Barry P.	Stu C&GSC	OTJAG	Jun 78
STRASSBURG, Thomas M.	TJAGSA	Stu C&GSC	Aug 78
WERNER, Steven M.	USALSA	NY Area Cmd	Jun 78
		Ft Hamilton, NY	
WOODWARD, William B.	Missile Research &	FORSCOM	Jun 78
	Development Cmd,		
	Redstone Arsenal, AL		
ZIMMERMAN, Charles A.	Retraining Bde, Ft	2d Inf Div APO	Jul 78
	Riley, KS	96224	
<b>CAPTAINS</b>			
AILEO, William A.	Comm & Elect Mat	OTJAG	Jun 78
	Readiness Cmd, Ft		
	Monmouth, NJ		
BRUMMETT, William R.	USAG White Sands	USAG Yuma PG	Apr 78
	Missile Range, NM	Yuma PG, AZ	
CUNNINGHAM, Clarence E.	USAG Yuma PG, Yuma	101st ABN Div Ft	Apr 78
	PG, AZ	Campbell, KY	

NAME	FROM	TO	APPROX DATE
DOWELL, David R.	4th USA Missile Cmd, Korea	TJAGSA	Jul 78
ELLIOTT, Harold	26 Adv Crs	TJAGSA	May 78
FOWLER, Joseph	26th Adv Crs	TJAGSA	May 78
FRICK, Ralph J.	2d Inf Div APO 96224	9th Inf Div Ft Lewis, WA	Jun 78
FULBRUGE, Charles I., Jr	7th Inf Div Ft Ord CA	8th US Army APO 96301	Jul 78
HIMES, Albert L.	USALSA	Korea	Jun 78
KITTEL, Robert N.	Sup Cmd Hawaii	USALSA	Aug 78
LEE, Verndal C.	19th Sup Cmd APO 96212	Madigan-AMC Tacoma, WA	Sep 78
LEWIS, Hollis C.	Air Def Ctr Ft Bliss, TX	USALSA	Aug 78
LEWIS, Terrence L.	2d Sup Cmd APO 09160	USALSA	May 78
LORENCE, David R.	USALSA w/d Nurnberg	USAG Ft McCoy, WI	Jul 78
MARSHALL, Frank C.	USAREUR	USALSA	Aug 78
MATHESON, Ralph G.	VII Corps APO 09107	USAG Ft Drum, NY	Jun 78
PERRAULT, Donald J.	VII Corps APO 09107	USALSA	Jun 78
RENFROW, John M.	24th Inf Div Ft Stewart, GA	USALSA	May 78
SHIELDS, Buren R., III	USALSA	Eng Ctr Ft Belvoir VA	Apr 78
STOGNER, William W.	OTJAG	Korea	Jul 78
THOMPSON, Paul G.	21st Sup Cmd APO 09227	USALSA	Jun 78
WILLIAMS, Robert P.	USAG Pres of SF	OTJAG	Jun 78
ZIMMERMAN, John A., III	7th Inf Div Ft OrdCA	Korea	May 78

#### 4. AUS Promotions.

NAME	RANK	DATE
Clark, Elliot J., Jr.	MAJOR	11 Feb 78
Finnegan, Richard N.		7 Feb 78
Long, John W.		3 Feb 78
Millard, Arthur F.		4 Feb 78
Harris, Jeffrey L.	CAPTAIN	13 Jan 78

**5. Educational Opportunities for Legal Clerks and Court Reporters.** See a separate article by that title in this issue of *The Army Lawyer*.

**6. NCOES Course (Advanced) 71D/E Selections.** Congratulations to the legal clerks and court reporters listed below who were selected to attend the FY 78 NCOES Course (Advanced) 71D/E. The entire course will be conducted at Fort Benjamin Harrison, Indiana, from 7 May 1978 to 16 June 1978.

SP6 AKACKI, Edward  
SP6 AMOS, Carl A.

SP6 BALDWIN, Gary L.  
SP6 BARBER, Aziz G.  
SP6 BOOHER, Fred W.  
SP6 BROWN, Richard B.  
SP6 BULLARD, Chester L.  
SP6 BURKE, Billy Ray  
SP6 CLAYTON, Richard J.  
SP6 CROCHMAN, Gregory E.  
SP6 DUMAS, George  
SP6 GONZALEZ, Gonzalez  
SP6 GOSSMANN, Serge  
SP6 HILLEBRAND, Joseph  
SP6 JONES, Dennis  
SP6 JONES, James Betts  
SP6 KENNEDY, Elze  
SP6 KIRKPATRICK, Amos  
SP6 KNUDSEN, Patrick Jr.  
SP6 LEALHIEE, Uilifelet  
SP6 LOCKE, Glenn W.  
SP6 MACKS, Andrew J.  
SP6 MASSEY, Robert N.  
SP6 MATTHEWS, Kenneth  
SP6 MAY, John Raymond  
SP6 MCCORMICK, Larry W.  
SP6 MIZE, Tommy R.  
SP6 MORGAN, Jeffrey  
SP6 MULLINS, Phillip C.

SP6 MURPHY, David  
 SP6 MYERS, Claude  
 SP6 NICOLAI, John  
 SP6 NOWLAND, Thomas S.  
 SP6 OCHOA, James  
 SP6 PEPPER, Gary Dwayne  
 SP6 POULTON, Charles  
 SP6 ROSE, Curtis A.  
 SP6 SIMPSON, Baxter

SP6 SMITH, Peter J.  
 SP6 STRUNTZ, Duane A.  
 SP6 TATE, Marsha L.  
 SP6 TAYLOR, Michael L.  
 SP6 TURTON, Linda  
 SP6 VEST, Richard L.  
 SP6 WATSON, Donald Wayne  
 SP6 WIBBELS, Ronny E.  
 SP6 YINGLING, Lawrence

## Current Materials of Interest

### Articles

Schaap, *Justice for G.I. Joe*, JURIS DOCTOR, Mar. 1978, at 14.

The 'Born Again' Court of Military Appeals, JURIS DOCTOR, Mar. 1978, at 20.

Traub, *An Upgrade for the Discharge System?*, JURIS DOCTOR, Mar. 1978, at 24.

Antonides, *First Amendment Goes AWOL*, JURIS DOCTOR, Mar. 1978, at 25.

Survey, *Twenty-Second Annual Survey of Developments in Virginia Law, 1976-1977*, 63 VA. L. REV. 1350 (1977).

Major David A. Higley, *Justice and the Judiciary: A Look at the Partial Jurist*, 29 JAG J. 219 (1977).

Lieutenant Commander Roger F. Pitkin, *The Military Justice System: An Analysis from the Defendant's Perspective*, 29 JAG J. 251 (1977).

Major C. H. Morrison, Jr., *Is The Military Brig a Debtor's Prison?*, 29 JAG J. 279 (1977).

Deanne C. Siemer, A. Stephen Hut, Jr., Gurden E. Drake, *Prohibition on Military Unionization: A Constitutional Appraisal*, 78 MIL. L. REV. 1 (1977).

Captain Fredric I. Lederer, *Miranda v. Arizona—The Law Today*, 78 MIL. L. REV. 107 (1977).

R. R. Baxter, *Modernizing the Law of War*, 78 MIL. L. REV. 165 (1977).

Lieutenant Colonel H. M. Hougen, *The Royalty Adjustment Act: The Excavation of an Old Statute Authorizing Administrative Settlement*

*of Claims Pertaining to Inventions*, 19 IDEA 65 (1977).

### Case Note

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